No. 116054

In the

Supreme Court of Illinois

ELIZABETH KEATING, PAUL W. KETZ, RANDALL D. GUINN, CAMERON W. MALCOLM, JR., CHARLIE PEACOCK, SHIRLEY PEACOCK and JENNIFER P. DiGREGORIO, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant-Appellee.

On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-11-2559.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 10 CH 28652.
The Honorable Michael B. Hyman, Judge Presiding.

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case challenges the legal bases for the defendant City of Chicago's ("City" or "Chicago") 2003 Red Light Camera Ordinance ("Ordinance") and the ticketing program it created, which the City has operated continuously since then. Plaintiffs are vehicle owners or operators who received $100 "Camera Enforcement Violation" notices from the Defendant pursuant to the Ordinance. The notices, issued by the City's Department of Revenue, asserted that Plaintiffs' vehicles had violated the law requiring vehicles to stop at red lights, and demanded payments to the City of $100, with escalating consequences for non-payment. Plaintiffs filed this class action, for themselves and on behalf of a class of similarly situated motorists and vehicle owners, alleging that Chicago had no legal authority to enact the Ordinance or to fine them under its program. The Circuit Court dismissed the action and the Appellate Court affirmed. This Court should reverse that ruling.

Plaintiffs assert that Chicago lacks the legal authority to issue its "Camera Enforcement Violation" notices because: (1) Chicago lacked any authority, home rule or otherwise, to enact such an Ordinance in 2003, rendering it invalid and void from its inception; (2) the Ordinance remained invalid after the enactment of Public Act 94-795 (2006), because that statute –which purported to authorize the municipalities in just eight specifically-named counties to adopt red light camera ordinances—was a "local law" that could have been made general, prohibited by Article IV, Section 13 of the Illinois Constitution; and (3) even if the 2006 legislation is not

unconstitutional, it never validated Chicago's then-existing red light camera program: to lawfully operate its program, the City needed to re-enact its Ordinance pursuant to that authority, but has never done so. Because the 2003 Ordinance was *ultra vires*, both it and the ticketing program it created are void *ab initio*.

ISSUES PRESENTED FOR REVIEW

1) Whether Chicago's 2003 red light camera ordinance and program were beyond Chicago's legal authority and void *ab initio* because the General Assembly, pursuant to Article VII, Section 6(h) and/or 6(i) of the Constitution, had properly excluded the City's home rule authority to enact alternative traffic laws enforcing the rules of the road, or to administratively adjudicate such laws.

2) Whether Public Act 94-795, a local law which by its express terms applied to all municipalities in several named counties, but to no others, could have been made general and so is barred by Article IV, Section 13 of the Constitution.

3) Whether, even if Public Act 94-795 was valid, it could have retroactively authorized Chicago's red light camera ordinance and program, where Chicago never re-enacted any post-enabling act ordinance.

JURISDICTION

Supreme Court Rule 315 gives this Court jurisdiction. On August 11, 2011, the Circuit Court of Cook County entered an order granting the defendant's motion to dismiss in its entirety and with prejudice. Plaintiffs

appealed as of right under Supreme Court Rule 303. The Appellate Court issued an order affirming the Judgment on January 24, 2013. Appellants filed a Petition for Rehearing. The Appellate Court requested briefing, but then denied rehearing on April 8, 2013. Plaintiffs filed their Petition for Leave to Appeal under Rule 315(a) on May 13, 2013, which this Court granted on September 25, 2013.

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCE INVOLVED

This action involves the construction or validity of the following provisions, which are quoted below or set forth in the Appendix:

- The Chicago Red Light Camera Ordinance, adopted July 9, 2003 (creating Chapter 9-102 of the Chicago Municipal Code)
- Illinois Constitution, Article IV, Section 13
- Illinois Constitution, Article VII, Section 6
- Public Act 94-795 (amending 625 ILCS 5/11-208.3 and creating 625 ILCS 5/11-208.6)
- The Illinois Vehicle Code, Chapter 11, Sections 207, 208.1, 208.2 and 306
- The Illinois Municipal Code, Chapter 1, Section 2.1.2

STATEMENT OF FACTS

Chicago's 2003 Red Light Camera Ordinance

On July 9, 2003, the Chicago City Council adopted an ordinance[1] that created an "Automated Red Light Camera Program" ("Red Light Camera Program" or the "Program"). (A6)[2] This Ordinance expressly incorporated CMC Chs. 9-8, § 020(c)(1)-(2) (governing red light violations) (A93), and 9-16-030(c) (A95) (governing right turns on red) but created an alternative means of enforcing those laws (A84). Before enactment of the Ordinance, Chicago, like all units of local government in the state, enforced red light violations exclusively through the issuance, by an arresting officer, of a "Uniform Citation Notice"; all such violations were adjudicated in the Circuit Court and convictions reported to the Secretary of State. (A32) The Ordinance created an entirely new way of enforcing red light violations.

Chicago's "red light cameras" are photographic recording devices mounted near street intersections with traffic signals. (A3) Sensors detect when a motor vehicle has crossed a stop line or otherwise entered an intersection. If the signal is red, the cameras record a video clip showing the traffic signal and the vehicle traveling into the intersection. (A3) Chicago's

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[1] Chicago, Ill., Municipal Code ("CMC") Ch. 9-102, § 010, *et seq.* (A84-92) Current version available at www.amlegal.com. The City's red light camera ordinance is referred to throughout this brief as the "Ordinance."

[2] Citations to the Record on Appeal (Volumes 1–4) are in the form "CXXX." Citations to documents in the Appendix, even if also contained in the Record on Appeal, are in the form "AXX." (*See* Table of Contents to Appendix)

cameras also take a still photograph of the rear license plate of the vehicle. Under the Ordinance, the owner of a vehicle photographed (as determined by a license plate registration search), even though not necessarily its driver, is liable for the infraction and is fined. (A7, A87) The Program began photographing vehicles, and fining owners, in late 2003. (A1)

The Program uses the enforcement structure previously used for adjudication of municipal parking tickets. (A6) Chicago issues written "Red Light Violation" or "Camera Enforcement Violation" notices ("Notices" or "Tickets") by mail. (A7) Chicago's Program is run by its Department of Revenue (A88), and its Director of Revenue is designated as its Traffic Compliance Administrator (C476, C505). The Notices command a recipient to either pay $100.00 or contest the fine, stating, *inter alia*:

> YOU MUST EITHER PAY THE APPLICABLE FINE OR CONTEST THIS VIOLATION . . . Once this date [indicated on notice] has passed you can no longer contest by mail or schedule an in-person hearing . . . . All registered owners appearing on the license plate registration or lessees, if applicable, are legally responsible for this violation.

(C471-72) (capitalization in original).

The City employs several measures to ensure the payment of red light tickets, and the Amended Complaint contains specific allegations that these measures have a coercive effect. (A16-18) If a vehicle owner does not pay the $100 fine within 21 days of the determination of liability, Chicago adds another $100 penalty to the amount due, without regard to whether an owner has filed or may still plan to file for administrative review. (C513) The City

will also in some circumstances boot or tow vehicles with unpaid red light tickets (C372); vehicles are not released until the fines are paid. (C376)

Recipients who seek to contest a Ticket must do so at Chicago's Department of Administrative Hearings. (C472) No prosecutor participates in the hearing; Chicago is not required to produce any evidence besides the Notice itself. (A7) The hearing officers who conduct these hearings do not have jurisdiction to consider challenges to the City's authority to enact the Ordinance, or to the constitutionality of any Illinois statutes. (A18) Chicago's Ordinance allows only six specified factual defenses to be raised and considered at a hearing. (C335–36) The Circuit Court filing fees for a basic administrative review complaint in Cook County are higher than the ticket amount, and if such a claim were filed in the Chancery Division to include the legal challenges here, the filing-related fees would exceed $300.00. (A7) Payment of such fees deterred Plaintiff Jennifer DiGregorio from individually appealing her unsuccessful administrative challenge to her red light ticket. (Tr. 62, R65)[3]

Chicago keeps all the revenue from its Red Light Camera Program and deposits it in its general fund. (A23) The City has long claimed that the presence of cameras will reduce red light violations (C572), but its cameras

[3] Citations to the transcript of the July 15, 2011 hearing on the motion to dismiss (contained in Volume 5 of the Record) shall be to both the Transcript page (Tr. XX) and the Record (RXX).

continue to record over 700,000 violations per year. (A8) Chicago's cameras have not increased intersection safety; they actually increase collisions and decrease overall safety because the threat of a fine causes some drivers caught during the yellow light "dilemma zone" to stop abruptly (to avoid the fine) when the safer option would be to proceed through the intersection. (A3-4) In contrast, longer yellow light durations and increased "all red" durations would reduce red light violations and improve intersection safety in Chicago. (A4) Most of Chicago's yellow light durations, at 3.0 seconds, are at the bare minimum of legal requirements. This decreases intersection safety but increases the number of violations recorded by its cameras. (A4)

Attempts to Authorize Red Light Cameras under State Law

When Chicago enacted its Ordinance, all legal authority indicated that the Red Light Camera Program was not authorized under state law. (A5-6) After Chicago adopted its Ordinance, City officials enlisted the aid of Chicago's legislative delegation to sponsor bills in the 94th General Assembly to legalize municipal red light camera programs similar to that existing in Chicago. (A9) One such bill, House Bill 21 ("HB 21") authorized the use of red light cameras statewide. (A10) HB 21, which applied generally to all municipalities, failed to pass a state Senate vote (25 yeas, 29 nays and one "present" vote), and was withdrawn on May 20, 2005. (A10)

Months later, a similar bill, House Bill 4835 ("HB 4835"), was introduced. As first drafted, it too allowed for red light cameras and administrative adjudication in all municipalities statewide. (A10) Proponents

then added, as a late amendment, a new subsection restricting the definition of automated enforcement violations, proposed as 625 ILCS 5/11-208.6(m) ("Subsection (m)"). (A38) This amendment provided:

> This Section applies only to the Counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties.

Prior to passage the bill's Senate sponsor was asked how he picked the eight named counties; he explained that the bill was limited at the request of members of both parties in the Transportation Committee who "didn't want to have this option in their counties." (A71, C523, C605) Earlier, in response to constitutionality concerns raised in committee, the sponsor confirmed that "some counties were taken out of the bill per their request but the system is not unconstitutional and is very effective at saving lives." (Minutes, Senate Transportation Committee, 03/23/2006, *accessed via* LEXIS "2005 IL Legis. Bill Hist. HB 4835")

After the inclusion of Subsection (m)'s geographic restriction, the new bill gained six Senate votes (to 31) and narrowly passed on March 29, 2006. (A10) The bill was signed on May 22, 2006 and took effect as Public Act 94-795 ("PA 94-795" or the "Enabling Act"). (*See* A10, A26) The Enabling Act was described by one lobbyist as "legislative cover" for Chicago's unauthorized program. (A9) The Enabling Act operated prospectively only ("This Act takes effect upon becoming law." (A49)) and contained no language purporting to validate or authorize any pre-existing ordinances. It provided that, going forward:

> "[a] municipality or county designated in Section 11-208.6 *may enact an ordinance* providing for an automated traffic law enforcement system to enforce violations of this code or a similar provision of a local ordinance and imposing liability on a registered owner of a vehicle used in such a violation.

(A32-33) 625 ILCS 5/11-208(f) (emphasis added).

Chicago has consistently asserted since 2003 that its Automated Red Light Camera Program is a valid exercise of its home rule powers and does not require state authorization. (C572–79, A86) Chicago never repealed or re-enacted its Ordinance after the effective date of the Enabling Act, and never adopted a new ordinance like it. (C475–78)

The Effects of the Limited Geographic Restriction in Subsection (m)[4]

No Illinois county has adopted a camera ordinance; all red light camera programs in Illinois are operated by municipalities. (A12) Whether a municipality may adopt such a program is determined solely as a function of the county in which the municipality happens to sit. The Enabling Act permits small rural villages like Lenzburg (population 521)[5] and Symington (pop. 87) to enact red light camera ordinances (because these towns are located in St. Clair County and Will County, respectively), but it does not

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[4] The Circuit Court did not hold any evidentiary hearings relating to the way the Enabling Act distinguished municipalities, so the following represents only facts alleged the Amended Complaint and raised in briefs and arguments opposing the motion to dismiss.

[5] All population references in this brief are from 2010 U.S. Census Figures. (A12, C280)

permit some of the State's largest cities (such as Rockford, Peoria, and Springfield) or its most pedestrian–dense college towns (like Champaign-Urbana, Carbondale, Bloomington-Normal, and DeKalb) to do the same. (A12-14) Red light cameras are not permitted in rapidly-growing Oswego (pop. 30,355) (which is less than 45 miles from Chicago's Loop and located near major commuter routes) because Oswego is located in Kendall County. The cameras are permitted in the much smaller town of Harvard (pop. 9,447) which is twenty miles farther from Chicago and is not near any significant commuter routes, but happens to be located in McHenry County. (A12)

The Enabling Act's senate sponsor justified the legislative designation: "we limited it to the more populous counties." (C777, A71) The eight counties specifically listed in §208.6(m) have never been the eight most populous (or densely populated) in Illinois. (A14) Nor were they the eight counties with the greatest vehicle density. Winnebago County is not among the eight counties designated in §208.6(m). It has, and had at all relevant times, a population (295,266) and population density greater than that of either Madison County (pop. 269,282) or St. Clair County (pop. 270,056) (A12-14), as well as an almost 50 percent higher vehicle density (number of registered motor vehicles per square mile) than that of St. Clair County. (Tr. 30, R. 33)

Since passage of the Enabling Act, the General Assembly has attempted, at least twice, to amend the Vehicle Code to add Winnebago

County to the Subsection (m) list, but all geographic expansions of red light cameras have failed to pass in the Senate. (Tr. 30, R33.)

Plaintiffs' Red Light Camera Tickets

Plaintiffs Paul Ketz, Randall Guinn, Cameron Malcolm, Jr., Charlie Peacock, and Jennifer DiGregorio are all registered vehicle owners in Illinois who received red light Tickets from the City. (A15-18)[6] Plaintiff Shirley Peacock is the wife of Charlie Peacock and was the driver for some of the Notices issued to him as owner; she jointly paid the penalties on those Tickets with her husband. (A17) In light of the limited options available to challenge a red light camera Ticket and the serious consequences of non-payment, each Plaintiff who was issued a Ticket by Chicago ultimately paid it. (A16-18) Plaintiff Charlie Peacock contested some of his Notices by mail, unsuccessfully. (A17) Plaintiff Jennifer DiGregorio challenged her Notice at a hearing, where, represented by counsel, she attempted to raise challenges to Chicago's authority to operate its Program and to the constitutionality of the Enabling Act, but the hearing officer refused to consider them, and she was adjudged liable. (A18)

Procedural History

The original class action Complaint in this case was filed on July 2, 2010, against, *inter alia,* Chicago and its red light camera vendor, Redflex

[6] The Circuit Court found additional reasons why plaintiff Elizabeth Keating lacked standing, which are not at issue before this Court as she has not appealed the decision adverse to her.

Traffic Systems. (C7–68) The pleading alleged that Chicago lacked legal authority to implement its Program in 2003, and recited facts establishing the constitutional infirmities of the Enabling Act. (C7–68) RedFlex removed the case to the U.S. District Court, which remanded it. (C96–213) By agreement of the parties, Chicago did not respond to the initial complaint and plaintiffs filed an Amended Complaint on April 11, 2011, listing Chicago as the sole Defendant. (C269-283, A1-25)

Chicago filed a combined Motion to Dismiss under 735 ILCS 5/2-615 and 2-619 ("Motion"). (C322–431) The Circuit Court granted the Motion with prejudice, concluding that: (1) PA 94-795 was not unconstitutional local legislation, and once it took effect Chicago's "red light camera program was indisputably authorized." (C768); (2) Plaintiffs who received red light camera Notices after May 22, 2006 lacked the standing to challenge an Ordinance under which they were ticketed (C769); and (3) all Plaintiffs' claims were barred as a matter of law by the shield of a "voluntary payment" doctrine.[7] (C789)

The Appellate Court's Rule 23 Order affirmed the judgment, but on very different grounds. It found that all vehicle owners ticketed had standing to challenge Chicago's Ordinance (A56 ¶¶17-19), and that the coercive

[7] The circuit court also rejected Plaintiffs' other challenges to Public Act 94-795. Plaintiffs do not seek review of the portions of the court's order addressing those additional challenges.

measures Chicago takes to ensure payment of the Tickets vitiated the City's attempts to interpose a "voluntary payment" defense. (A22-33 ¶¶ 61-78) The Appellate Court also concluded that the 2003 Ordinance was always authorized, as a valid exercise of Chicago's "home rule" powers.

In light of its home rule finding, the Appellate Court was not required, but nonetheless went on to determine, that (1) the Enabling Act was not unconstitutional (A22 ¶59); and (2) plaintiffs "waived" their argument that due to the City's failure to reenact its Ordinance, even a valid Enabling Act could not authorize the City's Program where the Ordinance was void *ab initio* for want of authority to enact it. (A7-8 ¶20)[8]

STANDARD OF REVIEW

This Court reviews *de novo* both a determination as to the constitutionality of a state statute, and a circuit court ruling on a motion to dismiss. *Board of Education of Peoria School Dist. 150 v. Peoria Federation of Support Staff*, 2013 IL 114853 ¶41. This Court should accept as true all well-pleaded facts in the Amended Complaint and reasonable inferences therefrom; no cause of action should be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle plaintiffs to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). *De novo* review

[8] Although the Court of Appeals used the term "waived," it is clear that what the court meant was "forfeited." *See infra* at Sec. III.

gives no deference to the conclusions or specific rationales of the court(s) below. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 595 (4th Dist. 2011).

ARGUMENT

I. CHICAGO HAD NO LEGAL AUTHORITY TO ENACT ITS RED LIGHT CAMERA ORDINANCE IN 2003

Article VII of the Constitution grants municipalities with populations over 25,000 certain "home rule" powers, but only with respect to their own government and affairs, not the affairs of the State as a whole. ILL. CONST. Art. VII, Sec. 6(a); *City of Chicago v. StubHub, Inc.*, (*modified on denial of reh'g)* 2011 IL 111127 ¶ 19. What the Constitution gives with one hand, it limits with the other, by conferring on the General Assembly the power to declare state authority to be exclusive, and to limit the concurrent authority of home rule units. ILL. CONST. Art. VII, Sec. 6(h), 6(i). (A97) The question whether a claimed power is within the scope of home rule is for the courts. *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 540 (1975); *see also StubHub*, ¶ 19.

In this case, the Ordinance was *ultra vires*. Such a law was beyond the scope of Chicago's home rule powers because, in both the Illinois Vehicle Code and the Illinois Municipal Code, the General Assembly expressly required uniform enforcement of traffic rules across the state and specifically precluded *all* local authorities from adopting enforcement schemes other than the state-wide uniform system.

A. The General Assembly Has Limited Home Rule Powers and Established a Uniform Statewide System for Enforcing the Rules of the Road

Few things are expressed more clearly in Illinois law than that traffic regulations governing the movement of vehicles must be applied and enforced uniformly throughout the state. Chapter 11 of the Vehicle Code, 625 ILCS 5/100 *et seq.*, is entitled "RULES OF THE ROAD" ("Rules") and contains the basic traffic laws included in driver's education curricula for decades, including the state law requiring stops at steady red lights and, in some circumstances, allowing right turns on red. 625 ILCS 5/11-306, (A102) Municipalities are allowed to adopt the Vehicle Code, in whole or in part, into their own ordinances, *see* 625 ILCS 5/20-204, but may not enact ordinances which conflict with, or set up alternate enforcement of, these Rules. Chapter 11 contains not one but two uniformity provisions. Section 207 provides:

> The provisions of this Chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and *no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein.* Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter, but such regulations shall not be effective until signs giving reasonable notice thereof are posted.

625 ILCS 5/11-207 (emphasis added). In addition, Section 208.1 provides:

> The provisions of this Chapter of this Act, as amended, and the rules and regulations promulgated thereunder by any State Officer, Office, Agency, Department or Commission, shall be applicable and *uniformly applied and enforced throughout this State*, in all other political subdivisions and in all units of local government.

625 ILCS 5/11-208.1 (emphasis added).

In case these uniformity provisions were not clear enough, Chapter 11 also contains an explicit limitation on the power of home rule units:

> The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act.

625 ILCS 5/11-208.2.[9] This Court has previously held out this very language as an example of a proper limitation on home rule powers: "When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so." *City of Chicago v. Roman*, 184 Ill. 2d 505, 517-18 (1998) (citing Section 208.2, *supra*, as an example).

Illinois' Municipal Code reinforces the uniformity required by its Vehicle Code. It allows home rule units to adopt their own systems to adjudicate ordinance violations, but specifically instructs that such systems *may not* be used to enforce ordinances regulating vehicular movement:

> A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, *except for* (i) proceedings not within the statutory or home rule authority of municipalities; and (ii) *any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles* and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code.

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[9] When Chicago adopted its Ordinance in July of 2003, none of the enumerated sections allowed for anything like red light camera ordinances.

65 ILCS 5/1-2.1.2 (emphasis added). Thus, even as the Vehicle Code and the Municipal Code acknowledge that municipalities may enact their own ordinances that track state law, each also clearly requires that local bodies *enforce* those rules, whether found in the state statute or in a local ordinance, in the uniform statewide manner.[10] All of these laws were in effect when the City decided to implement an alternative enforcement scheme for its Red Light Camera Program in July 2003.

B. Chicago's Ordinance Conflicts With the Provisions of the Vehicle Code and the Municipal Code

The City's Ordinance runs afoul of the requirements of uniformity and the limitations on home rule powers set forth in the Vehicle Code and the Municipal Code. Under the Vehicle Code, red light violations are enforced by police officers. 625 ILCS 5/16-101. Traffic prosecutions are initiated by the preparation of a Uniform Citation, 725 ILCS 5/11-3, which is required to be transmitted to and adjudicated in the Circuit Courts. 210 Ill. 2d Rule 552. Convictions of traffic offenses are to be reported to the Secretary of State, who can suspend the licenses of repeat offenders. 625 ILCS 5/6-204; *see also People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 526-27 (1st Dist. 1999)(discussing uniform system).

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[10] The Municipal Code also states that "All provisions of this Code relating to the [municipal] control of streets, alleys, sidewalks and all other public ways are subject to the provisions of 'The Illinois Vehicle Code' as now and hereafter amended..." 65 ILCS 5/11-80-1.

Under Chicago's camera Program, by contrast, red light violations are enforced by automated cameras. No police officer need witness the violation; no Uniform Citation is issued, and offenses are adjudicated administratively, rather than in the Circuit Court. The City does not report convictions under the Ordinance to the Secretary of State.

Despite these different enforcement mechanisms, violations of the Ordinance are, without question, triggered by the *same conduct* (a vehicle entering an intersection against a red light) that is regulated by both the state Rules and by Chicago's uniform red-light ordinance, *see* CMC Ch. 9-8, § 020(c)(1)-(2); 9-16-030(c). Thus, rules proscribing identical conduct are enforced under the Ordinance differently than under the state Vehicle Code, in plain violation of the uniformity provisions discussed above.

The key component of this alternate enforcement scheme also violates the Municipal Code, which expressly forbade—and continues to forbid—administrative adjudication for any offense involving "a traffic regulation governing the movement of vehicles." 65 ILCS 5/1-2.1.2. This Court should not accept the conclusion of the Appellate Court that detection by a camera captures "a moment in time" and so cannot be a "moving violation." (A64 ¶¶39-40) A regulation that requires a vehicle to stop under prescribed circumstances (and penalizes the failure to do so) presupposes that the vehicle is moving, penalizes its failure to stop moving, and self-evidently regulates the movement of such a vehicle. Indeed, if the vehicle were not

moving, it could not enter an intersection against a red signal. That the Appellate Court believed that the *enforcement mechanism* only records a moment in time does not alter that the rule being enforced can only apply to a vehicle that is moving in the first place. It defies logic to suggest that Chicago may enforce red-light violations through administrative procedures so long as its cameras only record still images—especially where, as here, the City's Program also records a video clip of the alleged infraction. (A3)

Nor was it necessary for the General Assembly to specifically prohibit municipalities from adopting red-light camera ordinances, as the Appellate Court below apparently believed. Its Order asserted that:

> [p]rior to the 2006 enabling provision in section 11-208.6 for the red light camera automated system, *there was no state legislation regarding the use of red light cameras*, much less a *specific prohibition* against home rule authorities enacting such ordinances. Only with the enactment of red light camera legislation was a limit placed on home rule authorities in connection with automated traffic law enforcement systems.

(A14 ¶37) (emphasis added). The central premise of that assertion is incorrect, for two reasons. First, as noted above, the Ordinance employs the two features (non-uniform enforcement of state Rules and administrative enforcement of regulations governing the movement of vehicles) that were expressly, if generally, proscribed by the General Assembly. The legislature was not required to think of every possible traffic law that could violate these principles and prohibit each specifically. Second, the factual predicate for the Appellate Court's reasoning is mistaken: at the time Chicago enacted its Ordinance, the state legislature specifically authorized Illinois municipalities

with a population over 1 million (*i.e.*, Chicago) to use cameras in the enforcement of red light violations, *but only in certain, limited conditions, and not in connection with administrative adjudication.* From 1997 until its repeal by the Enabling Act (A48), the state law governing red light cameras only allowed:

> A municipality with a population of 1,000,000 or more may enact an ordinance that provides for the use of an automated red light enforcement system to enforce violations of this subsection (c) *that result in or involve a motor vehicle accident, leaving the scene of a motor vehicle accident, or reckless driving that results in bodily injury*. This paragraph 5 is subject to prosecutorial discretion that is consistent with applicable law.

625 ILCS 5/11-306(c)(5) (emphasis added), *repealed May 22, 2006* (A100)

In Illinois the rule of *expressio unis est exclusio alterius* assists courts in ascertaining legislative intent. *Villegas v. Board of Fire & Police Comm'rs* 167 Ill. 2d 108 (1995). Considering the pervasive uniformity requirements in Chapter 11, the legislature's narrow, and express, grant of authority to use red light cameras beginning in 1997 can only mean that it intended at that time to exclude home rule authority for any broader use of red light cameras by large municipalities.

Moreover, if the legislature had believed that home rule municipalities already had the authority to employ camera enforcement of red-light violations, it would have had little reason to pass the Enabling Act, much less to limit that law's applicability to only eight counties. Clearly, the legislators who "did not want this option" in their districts and who voted down the

original (general) red-light camera bill must have believed that, absent the new legislation, there was no such authority.

C. The Appellate Court's Decision Conflicts With Numerous Authorities That Uniformly Conclude That Alternative Enforcement Schemes Like The Ordinance Are Impermissible

The Appellate Court's Order is at odds with the consistent line of authorities concerning alternative traffic enforcement and the limits of home rule. Indeed, Chicago was not the first municipality to attempt an alternative traffic ordinance, and by 2003 there was ample precedent that should have alerted Chicago that it lacked the power to adopt the Ordinance.

In 1986, the Appellate Court held that a home rule municipality lacked the power to enact a drunk-driving ordinance that provided for different penalties from those prescribed in the Vehicle Code, and specifically cited the Code's uniformity provision in support of its ruling. *Vill. of Park Forest v. Thomason*, 145 Ill. App. 3d 327, 330–32 (1st Dist. 1986).

In 1992, the Illinois Attorney General issued a formal Opinion finding that municipal ordinances allowing for "alternative" civil enforcement of traffic violations outside of the Vehicle Code are "void and unenforceable . . . conflict with the comprehensive traffic regulation and enforcement policy set forth in the Illinois Vehicle Code and the Supreme Court Rules on bail in traffic cases, and deny due process of law." Op. Att'y. Gen. No. 92-013, 1-2 (June 22, 1992), available at www.illinoisattorneygeneral.gov/opinions/1992/index.html. (C410–14) Formal opinions of the Attorney General are

entitled to considerable weight in resolving questions regarding the constitutionality of laws in Illinois. *See Mulligan v. Joliet Regional Port Dist.*, 123 Ill. 2d 303, 317-18 (1988).

In 1999, the Secretary of State filed a *quo warranto* action challenging the authority of several municipalities, including home rule units, to enact ordinances allowing them to issue their own violation notices and issue civil fines to motorists for violating traffic laws, without issuing a Uniform Traffic Citation and without reporting the offense to the Secretary of State as required by the Vehicle Code. *People ex rel. Ryan v. Vill. of Hanover Park*, 311 Ill. App. 3d 515 (1st Dist. 1999). The Appellate Court concluded that such ordinances conflicted with the Vehicle Code and upset its uniform design. The published opinion established that the alternative enforcement of various traffic laws, by home rule units, was precluded and, indeed, was exactly what the legislature sought to prevent in the uniformity provisions of Chapter 11.

In *Hanover Park*, the Appellate Court observed that the Vehicle Code is "devoid of any authorization for the programs that administratively adjudicate violations of chapter 11" and found that "to be valid, the alternative traffic programs must comport with the provisions mandating uniformity and consistency. . . ." 311 Ill. App. 3d at 527. The court found that the ordinances improperly provided for an enforcement scheme different from the one contemplated by the Vehicle Code and its attendant provisions.

Id. The specific deviations were strikingly similar to those at issue here. As the court explained:

> In lieu of a uniform citation being prepared after a police officer arrests an offender, under defendants' ordinances, the offender is given an offer to settle the matter. This gives the offender an opportunity to circumvent the potential consequences of committing the offense, namely, a chance to avoid an adjudication in the circuit court, a finding of guilty, and a guilty finding being reported to the Secretary of State. * * * As such, it is apparent that these programs fail to implement the Code as mandated under sections 11-207, 11-208.1, and 11-208.2. Consequently, the enforcement of the ordinances cannot be said to be uniform with enforcement of chapter 11 in areas of the state without these programs. 625 ILCS 5/11-207, 11-208.1, 11-208.2 (West 1998). Moreover, it follows that the lack of uniformity makes these ordinances inconsistent with the policy of uniformity expressed in chapter 11 of the Code.

Id. at 527.

The *Hanover Park* opinion explains that non-uniform *enforcement* of traffic laws is itself an inconsistency prohibited by the Vehicle Code. *Id.* Indeed, the Appellate Court stated, "all municipalities are limited to enacting traffic ordinances that are consistent with the provisions of chapter 11 of the Code and that do not upset the *uniform enforcement* of those provisions throughout the state." *Id.* at 525 (emphasis added).

The Appellate Court's decision below plainly conflicts with both its decision in *Hanover Park*, and the more recent decision in *Catom Trucking Inc. v. City of Chicago*, 2011 Ill App (1st) 101146, which, as here, involved a challenge to an ordinance in Chapter 9 of Chicago's municipal code. Like the red light Ordinance, that ordinance: (1) prohibited on a municipal level conduct already prohibited in chapter 11 of the Vehicle Code (the operation of

overweight trucks); (2) contained a method of violation detection different than that in uniform citations (use of non-police city employees to pull over and weigh trucks); and (3) was enforced at the municipal level, routing payments through the Department of Revenue, and adjudications through the Department of Administrative Hearings. *Catom Trucking*, ¶¶13-14. For purposes of analysis under the Illinois Municipal Code, Chicago's red light Ordinance and the ordinance at issue in *Catom Trucking* are indistinguishable. As discussed above, the Appellate Court concluded that the red light Ordinance captured but "a moment in time," while in *Catom Trucking*, the same court found the City was without jurisdiction to administratively enforce truck weight restrictions that were "traffic regulations governing the movement of vehicles." *Catom Trucking*, ¶18.

Finally, the Appellate Court, Second District, has also recognized that municipal power does not extend to alternative enforcement of the rules of the road contained in Chapter 11 of the Vehicle Code. *See Vill. of Mundelein v. Franco*, 317 Ill. App. 3d 512, 519 (2d Dist. 2000). The decision below in this case is thus in conflict with consistent precedent that home rule units may not adopt alternative traffic enforcement schemes and may not use administrative enforcement procedures for regulations that govern the movement of vehicles. This Court should bring this case into harmony with those precedents and clarify the limits of home rule authority to vary the enforcement of traffic regulations. The Court should reverse the Appellate

Court's holding that Chicago had home rule authority to adopt the Ordinance.

Because Chicago lacked authority to operate its Program in 2003, this Court should next consider whether the Enabling Act conferred that missing authority when it was enacted in 2006. As discussed below, it did not, because the Enabling Act itself is unconstitutional.

II. THE ENABLING ACT CANNOT AUTHORIZE CHICAGO'S PROGRAM BECAUSE IT IS UNCONSTITUTIONAL "LOCAL" LEGISLATION

Illinois courts are duty-bound to strike down legislation that violates the constitution. *People v. Olender*, 222 Ill. 2d 123, 131 (2005). While statutes and ordinances may be entitled to a presumption of constitutionality, this Court has recognized that "it is equally our duty to declare invalid an unconstitutional statute, no matter how desirable or beneficial the attempted legislation may be." *People v. P.H.*, 145 Ill. 2d 209, 221 (1991).

A. The Plain Language of the Constitution Prohibits the Enabling Act: Truly "Local" Legislation that Could Have Been Made General

Article IV, Section 13 of the Illinois Constitution (1970) states:

> The 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.

This clause ("Section 13") is wholly unique: it specifically bans the legislature from passing certain classes of laws, it is the only section of the Constitution that expressly provides for judicial review of legislation, and it details the

exact test the courts must apply to challenged laws. *See Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 391–93 (1997).

Shortly after the 1970 Constitution took effect, this Court confirmed that applying the Article 13 test is just as straightforward as it seems:

> As we recently pointed out in *Bridgewater v. Hotz* (1972), 51 Ill.2d 103, 281 N.E.2d 317, and in *Grace v. Howlett*, (1972), 51 Ill.2d 478, 283 N.E.2d 474, the criteria developed under the earlier constitution for determining whether a law is local or special are still valid, but *the deference previously accorded the legislative judgment whether a general law could be made applicable has been largely eliminated by the addition in section 13 of the provision that this 'shall be a matter for judicial determination.'* There is, in our judgment, no doubt that this 1972 act is special legislation. As we said in *Grace v. Howlett*, *'The constitutional test under section 13 of article IV is whether a general law can be made applicable* * * *.' * * * It is our opinion that a general law could have been made applicable, and that Public Act 77-2819 therefore violates the constitution's prohibition against special legislation.

People ex rel. East Side Levee and Sanitary Dist. v. Madison County Levee and Sanitary Dist., 54 Ill. 2d 442, 447 (1973) (emphasis added), *cited with approval* in *Peoria School Dist. 150, supra* at ¶¶ 50-54. The Enabling Act, a local law that could have been made general, is prohibited by Section 13: if PA 94-795 does not violate this provision, it is hard to see when Section 13 would ever apply.

1. The Enabling Act Is a "Local Law"

There can be no question that the Enabling Act is a "local law;" Chicago has never seriously disputed that. Although what is a "special" law may at times present the courts with a difficult question, what is a "local" law does not: "[a] local law is one which applies only to the government of a

portion of the territory of the state.'" *Best*, 179 Ill. 2d. at 392 (*quoting* George R. Braden & Rubin G. Cohn, Ill. Constitutional Study Comm'n, *The Ill. Constitution: An Annotated & Comparative Analysis* 206–07 (Univ. of Ill. Inst. of Gov't and Pub. Affairs (1969))).[11] *See also People v. Wilcox*, 237 Ill. 421, 424 (1908) ("The word 'local' signifies belonging to or confined to a particular place. When applied to legislation, it signifies such legislation as relates to only a portion of the territory of a state") (construing 1870 Constitution).

Few cases address these true "local" laws, but this Court recently considered the Article 13 problems inherent in statutes that contain restrictions that "close . . . the class as of the statute's effective date." *Peoria School Dist. 150*, 2013 IL 114853 at ¶54. True local laws always present this "closed class" problem, which is why they are so exceedingly rare. Here, the Enabling Act will always apply only to municipalities in the eight named counties, no matter how large, congested (or lawless) other municipalities are, or may become. Analytically, the designation of specific local government units in Subsection (m) of the Enabling Act operates in the same

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[11] This treatise, hereafter "Braden & Cohn," was commissioned by the Illinois Constitutional Study Commission as part of the preparations for the 1970 Constitutional Convention. It contains detailed analysis of, *inter alia*, judicial decisions under the various provisions of the 1870 Constitution, coupled with recommendations for the delegates to the forthcoming 1970 Constitutional Convention. Many of the recommendations of the authors were adopted in their entirety in the 1970 Constitution.

manner as the date restriction in *Peoria School Dist. 150*—it prevents the law from applying to new entities as those entities come to meet whatever criteria (if any) originally informed the law's classification.

2. The Enabling Act Could Easily Have Been Made General

As this Court articulated in *Peoria School Dist. 150* and in *East Side Levee*, once it is determined that a law is truly "special" or "local," the court then needs only to determine whether that law could have been made "general." *See Peoria School Dist. 150, supra* at ¶ 60. A law is constitutional, and "general" "not because it embraces all of the governed, but because it may, from its terms, embrace all who occupy a like position to those included." *Cutinello v. Whitley*, 161 Ill. 2d 409, 432–33 (1994) (Freeman, J., dissenting) (*quoting Bridgewater*, 51 Ill. 2d at 111 (1972)); *see also In re Estate of Jolliff*, 199 Ill. 2d 510, 518 (2002). With its geographic limitations, the Enabling Act is not general: it treats similarly situated municipalities very differently – and treats some very different municipalities the same.

The history, the structure, and the policy assumptions that underlie the Enabling Act all demonstrate that it could easily have been made general. First, there is no dispute that the both Enabling Act, and its predecessor (HB 21) were originally drafted as bills of general application. Although it has been this Court's jurisprudence that the legislature need not provide a reason for why it made a certain legislative classification, it is also true that "[w]here some rationale is offered, however, we [the Supreme Court] are not required to ignore it." *Cutinello*, 161 Ill. 2d at 428 (Freeman,

J., dissenting); *see also Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 86-87 (2002) (looking to legislative history in "special" legislation challenge of statute when "[t]he reason for the classification is not apparent from the face of the statute."); *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 25-26 (2003) (same). Here, remarkably, legislative history actually establishes that the Enabling Act is local because a general law was not politically palatable: state senators told the bill's sponsor that they did not want red light cameras in their counties, he removed those counties from the scope of the bill, and then it narrowly passed. The inability to *pass* a general law does not then permit the legislature to *make* a local or special law, and this Court "cannot rule that the legislature is free to enact special legislation simply because 'reform may take one step at a time.'" *Best*, 179 Ill. 2d at 398 (citing *Grace*, 51 Ill.2d at 487).

Second, the structure of the Enabling Act shows that it easily could have been made a law of general application. Only one sentence (now codified at §208.6(m)), not in earlier versions of the bill, makes the Enabling Act "local." Removing Subsection (m) restores the law to general applicability.

Finally, the public policy problem that red light cameras ostensibly seek to remedy—the running of red lights—is not one that requires a facially "local" law. This Court recognizes that there are some laws, needed to address "a problem unique to a particular geographical area and/or one involving peculiar, multifaceted economic considerations," that cannot be

made general and so will pass constitutional muster under Section 13. *Peoria School Dist. 150* at ¶ 57. The Enabling Act, though, is not one of them. Traffic lights are found everywhere in this State, and red light violations are too (as are, for that matter, cash-strapped municipalities that would benefit from camera revenue). Chicago has not to date articulated any reason why what it considers to be the "safety" (and what are the undoubted financial) benefits of red light camera ordinances should not be available to every county and every municipality in the state. It would be hard-pressed to do so because PA 94-795 is only an *enabling* act: it imposes no costs or responsibilities on any county or municipality that simply chooses *not to enact* a compliant red light camera ordinance.

B. The Enabling Act Is a Prohibited Local Law Even Under the Two-Prong Test

Although application of the simple test described above should be sufficient to strike down the Enabling Act, this Court has sometimes applied a different two-prong test. But even under that test, the Enabling Act is unconstitutional.

1. The "Two Prong" Test Goes Beyond Rational Basis

Chicago has consistently urged that the Enabling Act must be analyzed under the same old "deferential rational basis test" that would apply to any legislative act, as if the ban on local legislation did not exist. But, as discussed above, the Court owes the legislature no deference on the question of whether a law could be made general. Further, because the

Enabling Act bases its designation on a territorial difference, this Court's precedents call for the application of the "two prong" test. *In re Pet. of the Village of Vernon Hills*, 168 Ill. 2d 117, 127 (1995). The Court explains:

> This court has further defined the rational basis test when reviewing legislative classifications based upon population or territorial differences. For at least half a century, this court has held that such a classification will survive a special legislation challenge only (1) where founded upon a rational difference of situation or condition existing in the persons or objects upon which the classification rests, and (2) where there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished. (citations) Although this test has remained the same for more than 50 years, this court in *In re Belmont Fire Protection District* (1986), 111 Ill. 2d 373, 380, 95 Ill. Dec. 521, 489 N.E.2d 1385, first labeled it the "two-prong test."

Id. at 123. The courts below, however, misapplied this test and reached the erroneous conclusion that the legislative "classification" at issue could pass muster under Section 13. It cannot.

The Enabling Act has two sets of legislative objects—it empowers both counties and municipalities to enact red light camera ordinances—but only a single tier of classification, made at the *county* level. This Court, applying the two-prong test, has twice stricken similar statutes. In *In re Belmont Fire Prot. Dist.*, 111 Ill. 2d 373 (1986), this Court invalidated a statute that gave to any municipality in a county defined by a population range (but to no other municipalities) the authority to eliminate fire protection districts that covered more than one municipality. In striking down the law, this Court explained:

> We can perceive of no rational reason why a *municipality* served by multiple fire protection districts in a county with a population between 600,000 and 1 million can be said to differ from a municipality which is served by multiple fire protection districts in a county with less than 600,000 or more than 1 million inhabitants. If a real need exists to eliminate the alleged disadvantages and dangers of multiple fire protection districts serving one municipality, then *the same need to remedy this evil also exists in other counties as well*, regardless of the level of the population of the county.

111 Ill. 2d 373, 382 (1986) (emphasis added). As here, the statute at issue in *In re Belmont* was an enabling act; it imposed no burden on any municipality but, rather, provided a tool that certain "favored" municipalities could implement to address a perceived problem. When municipalities are the object of the law (as in the Enabling Act) valid legislative classifications must also be made at that level:

> [I]t would rationally follow that the statute in question should be based on either the population, urbanization, or density *of the municipality involved,* not the population of the *county* in which the municipality lies.

Id. at 385 (emphasis added). The Enabling Act, of course, divides Illinois' 1312 municipalities into two groups with absolutely no consideration of their population, urbanization, density, or traffic flow, and it uses a classification that will never change, regardless of how the municipalities themselves may change. It defines not a single factor that could justify why red light cameras are allowable in one community, but not another. Nor can any municipality outside of the classification ever "grow its way into" the classification or otherwise achieve inclusion based on changed circumstances.

This Court also struck down a similar, two-tiered law in *In re Pet. of Vill. of Vernon Hills*, 168 Ill. 2d 117 (1995), which gave only the municipalities in certain, population-defined counties, special powers regarding fire protection districts. Once again, this Court clarified that "there is no relationship whatsoever between county population and the need for *municipalities* to consolidate fire protection districts." 168 Ill. 2d at 129 (emphasis added).

2. The Enabling Act's Two-Tiered "Classification" Leads to Patently Arbitrary Results at the Municipal Level

It is well established that a law is not "special" or "local" merely because it operates only in certain parts of the state, as long as the conditions necessary for the law's application exist only in those areas. But when a law treats similarly situated objects differently, it cannot be said to be general. Here, when the effect of the Enabling Act is considered at the municipal level the irrationality of this "legislative classification" becomes obvious.

Plaintiffs have the burden of establishing the unconstitutional effect of a classification assailed as local or special, *In re Pet. of Vill. of Vernon Hills*, 168 Ill. 2d at 123, but the Circuit Court here denied plaintiffs even an evidentiary hearing, and the City resisted any efforts to create a fuller record (Tr 25-27, R 28-30). However, the record here still contains sufficient facts to demonstrate the arbitrariness of the eight-county limitation in the Enabling Act: it treats municipalities that are as different as can be imagined with

respect to any traffic-related concern the same, yet fails to treat similarly situated municipalities alike.

Both the Circuit Court and the Appellate Court below failed to consider how the eight-county limitation applied at the municipal level. The Circuit Court accepted Chicago's suggestion that "traffic volume due to county population and proximity to Chicago and St. Louis" provided the justification for the designation—something never mentioned in the legislative history. But even this rationale, tailored (albeit inaccurately) to survive the first prong of the test, cannot possibly survive the second. This is so because there is a fundamental mismatch between the legislative distinction and the objects upon which the law operates: the classification is framed in terms of *counties*, but it actually operates—and operates without question as to defendant Chicago—only to distinguish *municipalities*. There is simply no rational basis to distinguish similar municipalities upon the basis of the county in which they are located, and not upon any factor that could actually distinguish them.

Thus, Symington (pop. 87), a small rural village, is permitted to install red light cameras, because it is in Will County. But because the Enabling Act's designation does not distinguish on the basis of municipal population, congestion, traffic patterns, or vehicle accidents, cities like Springfield and Peoria, pedestrian-dense college towns like Champaign-Urbana and Bloomington, and rapidly growing suburbs like Oswego, may not enjoy the

financial and claimed safety benefits of red light cameras because they are in the "wrong" counties.

Even assuming that, as the Circuit Court supposed, proximity to a big city matters, Plaintiffs argued and could easily prove (if given the chance) that there are a number of larger municipalities less than an hour's drive from Chicago (like Oswego, *supra*, or Kankakee, on Interstate 57, pop. 27,537) that are not within the eight-county delineation, whereas smaller rural towns almost 70 miles from Chicago and nowhere near a commuter route to the City (Harvard, pop. 9,957) are within it. A municipality may be 45 miles from downtown Chicago and outside the delineation, or 75 miles from City Hall but in the favored (or disfavored, depending on one's perspective) group.

Even if the legislature is allowed to speculate that traffic congestion is worse in St. Clair *County* than in Winnebago *County* (which it is not) that has nothing to do with whether red light violations are a bigger problem in the *City* of Rockford (pop. 152,871, in Winnebago County) where red light cameras are prohibited, than in the *Village* of Lenzburg (pop. 521, in St. Clair County), where they are allowed—but which has no traffic signals. (A11-12)

Chicago, of course, would prefer that this Court view the effect of this law only at the county level. But Chicago's program does not operate under the (ostensible) authority conferred at the county level and, even at that level, the Act still would not pass muster. Winnebago County, not on the

eight-county list, has a greater population and population density than either Madison or St. Clair County and has a 50% higher level of vehicle congestion than St. Clair County (Tr. 30, R33), which is on the list. (A12-14) Winnebago is also home to Rockford, the third largest city in Illinois, which is at least three times larger than any municipality in Madison or St. Clair Counties. There is no rational difference of traffic-related situation between Winnebago County and the eight counties on the list that justifies their disparate treatment in the Enabling Act.

Chicago and the courts below were content to try to rationalize the Enabling Act's classification after the fact, yet disregarding the well-pleaded facts indicating that the "classification" at issue here was made to secure passage of an otherwise politically unpopular bill. Only through strained (and ultimately inaccurate) contortions can some other justification be conceived, yet even then, the Act effectively draws its classification at random – especially as to municipalities. A "classification" that operates in a "random fashion" is unconstitutional. *Christen v. Cnty. of Winnebago*, 34 Ill. 2d 617, 617–20, 623 (1966) (striking down, under the 1870 Constitution, a population-based classification that resulted in a courthouse construction bill that only applied in 6 of the 102 Illinois counties).

C. The Intent of the Drafters of the 1970 Constitution Was to Ban Local Legislation, Especially Where It Was Made Local Only to Secure the Votes for Passage

The rules of constitutional interpretation are generally the same as those of statutory construction: to determine the intent of the drafters and, in

the case of a constitution, those who ratified it. *People v. Fitzpatrick*, 2013 IL 113449 ¶23. It is uncontroverted in this case that the intent of the drafters of Article 13 was to ban precisely the kind of local legislation at issue: an act that would not have passed the legislature without the limitation ensuring that the law would not apply to the constituents of many who voted for it.

1. The Historical Problems of Local and Special Legislation and the Attempts of Two Constitutions to Manage Them

The drafters of the Article IV, Section 13 of the 1970 Constitution intended for the courts to construe the prohibition on local legislation strictly as written and to construe the exception for laws that could not be made general narrowly in order to achieve the result of reducing, or eliminating altogether, the problems with special and local legislation that had led to the adoption of the 1970 Constitution in the first place. The current ban on local and special laws extends, but is grounded in the history of, the ban contained in the Constitution of 1870.

In the mid-19th century, the Illinois General Assembly regularly indulged in local and special legislation, or "private bills." This caused a number of problems that interfered with effective state government. Robert M. Ireland, *The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States*, 46 AM. J. LEGAL HIST. 271, 271 (2004) (hereinafter "Ireland"). The tendency of state legislators to use local or special laws to secure the favor of local voters, or bestow particular benefits on constituents, created several problems. First, the sheer volume of such

legislation hindered the ability of legislatures to devote appropriate time and resources to serious, statewide problems. *Id.* at 272, Braden & Cohn at 207 ("[I]f it is permitted, an inordinate amount of time is taken up with local and special legislation."). To allow local laws is to create the opportunity for legislators effectively to "logroll" bad bills into law. *Id.* at 273. The drafters recognized that when local laws are permitted, proponents of such a bills can convince fellow legislators (whose districts will not be affected by the law) to vote for their bills as matter of legislative "courtesy," knowing that when the time comes, they will in return find support for their own local and special bills, no matter how bad or unpopular. *Id.* at 273–74, Braden & Cohn at 207 ("legislators are normally interested in their own private bills, and passage is relatively easy"). The undisputed facts here support the strong inference that this is just how the Enabling Act became law.

Illinois' Constitutional Convention of 1870 was called largely due to a perceived need to eliminate local and special legislation, Ireland, *supra,* at 295, and the document it created included such a ban, *see* ILL. CONST. OF 1870, art. IV, § 22 (prohibiting "local or special laws") ("Section 22"). A hundred years of judicial challenges to laws based on Section 22 followed. Braden & Cohn, *supra,* at 225. Several elements of the 1870 Constitution shaped the marked judicial deference to local and special laws seen in the cases of the time. Most importantly, Section 22 made no provision for judicial review. The wording of Section 22, and its placement in the legislative article,

strongly suggested that the proscription on local and special legislation was an admonition to the legislature, not an invitation to the courts. *Id.* at 222 (courts "consistently" stated that Section 22 "is addressed to the legislature and not to the courts," such that the courts considered passage of "a local or special law not otherwise prohibited a conclusive and unreviewable finding by the legislature that a general law cannot be made applicable"). Courts could and did sometimes strike down such laws, but judicial uncertainty as to the drafters' intent was reflected in case law prior to 1970.

Second, the 1870 Constitution contained no discrete equal protection guarantee. Litigants challenging invidious legislative classifications under the 1870 Constitution often couched their claims as local or special legislation challenges, even where the challenges would now be understood to raise concerns of equal protection or due process. Braden & Cohn, *supra,* at 218 ("courts "use[d] 'special legislation' as a way to get at general laws that, in the eyes of the court, violate concepts of due process and equal protection. The same judicial manipulation of the concept of 'local legislation' has been indulged in.") The Illinois courts adopted the deferential standard of review being developed in the federal courts under general due process and equal protection analysis. *Id.* at 214, 221.

Finally, home rule did not exist in 1870. Because even large municipalities had limited legislative powers, courts indulged the state legislature with more deference before the 1970 Constitution than is now

needed, allowing legislators flexibility to craft appropriate laws for their municipalities.

In the lead-up to the 1970 Constitution, Braden & Cohn recommended that in order to fully eliminate local and special legislation, the new Illinois Constitution would need to contain four features: (1) a provision expanding the powers of local governments; (2) discrete due process and equal protection guarantees; (3) replacement of the Section 22 "laundry list" of banned subjects with a clear, general prohibition; and (4) a clear statement of judicial review to enforce the ban. Braden & Cohn, *supra*, at 224–26.[12]

Even though the 1970 Constitution contained all the elements Braden and Cohn believed necessary to eliminate special and local legislation, they were all too aware that a century's worth of deferential court cases might obscure the intent of Section 13:

> The cautious solution is a provision like that of the Model quoted above, including the words of subjecting applicability of general laws to judicial determination. *There is, of course, no assurance that the courts would not gallop through such a hole, dragging the old pseudo-special legislation rules with them.* (One can rest assured that litigants would try to get the courts to do just that.) But if the problem of local and special legislation is handled in a comprehensive fashion as suggested here, with a well-

[12]Braden & Cohn may be considered the principal drafters or framers of Section 13; the wording they recommended for the section (that of the Sixth Model State Constitution), is what the delegates adopted. *Compare* Braden & Cohn, at 224 (proposing Article IV, Section 4.11 of the Model State Constitution, which states "[t]he legislature shall pass no special or local act when a general act is or can be made applicable, [which] shall be a matter for judicial interpretation") *with* Section 13.

> documented explanation of the four interrelated steps . . . *the courts might go along.*[13]

Id. at 226 (emphasis added). Chicago has not disputed that the drafters of the 1970 Constitution intended that this Court, presented with a local law that could have been made general, would construe Section 13 as written and strike down the Enabling Act.

2. *The Intent of Both the 1870 and 1970 Constitutions Was to Ban "True" Local Legislation Like the Enabling Act*

Even under the 1870 Constitution, most problems were created by "local legislation in artificial classification disguises," Braden & Cohn at 226. The drafters recognized that a true "local law," which merely named the geographic subdivisions where it applied, was almost never permissible; such laws were so rare, and so clearly unconstitutional, that even Article 22 barred them:

> Normally, in the law as elsewhere, the obvious violation of a rule not only creates no problems, it rarely occurs. This is true of local and special legislation. An obvious example of local legislation would be a statute proposing to permit the city of Onetown to have five dog-catchers, notwithstanding a general law that limited all cities to four dog-catchers.

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[13] In *Bridgewater,* this Court concluded only that the 1970 constitution "requires no change in our definition of when a law is 'general and uniform,' 'special,' or 'local.'" 51 Ill. 2d at 110. More than a decade later, this Court, in *In re Belmont,* opined that *Bridgewater* required much more: "an application of those well-settled equal protection principles developed prior to the 1970 constitution." 111 Ill. 2d 379-81 (citing a dozen cases decided between 1893 and 1966 under the former Article 22)—just what the drafters sought to avoid.

Id. at 207. Echoing Professor Kales' analysis[14] of the cases under Article 22, Braden & Cohn identified the related principle that, in dealing with statutes that have a local application, "a court should demand that the legislature so draft its statutes that the rationality of the classification is explicit." Braden & Cohn at 212. Unfortunately, truly local laws, like the Enabling Act, do not even contain any real "classification" because "[a]cts relating to local political subdivisions by name are a form of identification and *not classification.*" Singer, Norman J. & Singer, Shamie J.D., 2 SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 40:8 (7th ed.) (West 2011) (emphasis added). Such laws defy the ability of the court to identify, much less assess, the basis for the classification, and should not be permitted.

3. This Court Should Not Extend Cutinello, *a Decision Which Has Confused Analysis of True Local Legislation*

In *Cutinello v. Whitley*, 161 Ill. 2d 409 (1994) this Court upheld a facially local law that created a new county fuel tax, but only in three named counties. Below, Chicago suggested that this Court has regularly upholds true "local" laws, but, in fact, *Cutinello* stands alone. Plaintiffs submit that the *Cutinello* case has created substantial confusion regarding the applicability of Section 13 to true local legislation, and should be clarified at a minimum, or overruled. Unlike the statute at issue here, *Cutinello* involved only a one-tier classification, where the statute operated at the county level

[14] Kales, "Special Legislation as Defined in the Illinois Cases" 1 ILL L. REV 63 (1906).

and classified its objects by naming the relevant counties—a distinction this Court has made before:

> *Cutinello, Nevitt,* and *Bilyk* are therefore unlike the present case. Here, as in *Belmont,* there is no relationship whatsoever between *county* population and the need for *municipalities* to consolidate fire protection districts. There also is no basis on which to distinguish Lake County from any other county for purposes of section 14.14.

In re Pet. of Vill. of Vernon Hills, 168 Ill. 2d at 129 (emphasis in original). Further, the dissent in *Cutinello* succinctly summed up the problem with the statute there: "The act merely names, without any qualifying characteristics, the three counties included within its scope." 161 Ill. 2d at 427-48 (Freeman, J., dissenting).

Because of the significant differences between *Cutinello* and this case, which involves a novel, two-tiered statute containing no true classification, what Chicago is really asking this Court to do is to *extend Cutinello* well *beyond* the limits of that case and apply it to an entirely different type of classification scheme, without the rationale or the facts to support such a broadened application. But *Cutinello,* even limited to its own particular facts, is already at the far reaches of what might be considered constitutional under the "Local Law" provision and this Court has already declined to extend it.

Indeed, *Cutinello*'s effects already threaten to proliferate. The bill-drafting manual for the Illinois General Assembly touts the opinion as it advises drafters that they may now, effectively, disregard the ban on local

legislation, and eschew the hard work of valid legislative classification entirely:

> An Illinois Supreme Court opinion, however, suggests that it might be better just to name McHenry County and forget about trying to define its population, particularly when population may not be a rational and fair basis for making the distinction. *Cutinello v. Whitley*, 161 Ill.2d 409 (1994).

Illinois Bill Drafting Manual, Sec 20-15 (Legislative Reference Bureau, December 2012). Because *Cutinello* upheld the constitutionality of a facially local law, and now the Appellate Court has upheld a facially local law that combines the county-naming feature of *Cutinello* and extends it to municipalities in named counties, it appears that the constitutional ban on local legislation is no more. The Court should rectify this.

4. Presuming the Unconstitutionality of Facially Local Laws Would Better Effectuate the Drafters' Intent

This Court has recently clarified the rules that apply to the analysis of special legislation. *Peoria School District 150*, ¶¶ 46-54. As discussed above, the analysis applied to special laws containing date restrictions that effectively close the class of objects on which a statute operates should apply equally to facially local laws, which also define a closed class. Plaintiffs submit that the best way to enforce the principles in *Peoria School Dist. 150*, to effect the drafters' intent, and to clarify the uncertainty that *Cutinello* creates regarding true or facially local statutes, is to reverse the presumption of constitutionality for such laws. As the Missouri Supreme Court has explained:

> If the statute's classification contains close-ended characteristics, however, the statute is facially special. Closed-ended classifications are based upon historical facts, geography, or constitutional status, which focus on immutable characteristics. Facially special laws are presumed unconstitutional. The party defending a facially special law must demonstrate a substantial justification for the closed-ended classification. Otherwise, the law will be struck down as unconstitutional.

Board of Ed. of City of St. Louis v. Missouri State Board of Ed., 271 S.W.3d 1 (Mo. 2008) (internal citations omitted).

III. EVEN IF THE ENABLING ACT IS VALID, IT DID NOT AUTHORIZE CHICAGO'S VOID 2003 ORDINANCE

As discussed above, the Enabling Act is unconstitutional. But even if this Court does not declare it so, it should still strike down Chicago's Ordinance and the Program it created, because the City has never reenacted its void Ordinance. An ordinance adopted beyond a municipality's power "is void and, in legal contemplation, as inoperative as though it had never been passed." *Dean Milk Co. v. City of Aurora*, 404 Ill. 331, 338 (1949). *See also Two Hundred Nine Lake Shore Drive Bldg. Corp. v. City of Chicago*, 3 Ill. App. 3d 46, 51 (1971) (ordinance that is void as unauthorized has "no legal existence whatsoever"). The void *ab initio* doctrine is premised on the notion that an act void when enacted

> is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

People v. Blair, 2013 IL 114122, ¶28 (2013) (quoting *Norton v. Shelby County*, 118 U.S. 425, 442 (1886)); *see also People v. Burney*, 2011 Ill. App. 4th

100343, ¶42 (2011) (fines or fees imposed without proper statutory authority are void *ab initio*). A legislative enactment that is void *ab initio* may be challenged at any time. *People v. Wright*, 194 Ill. 2d 1, 23-4 (2000).

A. The Enabling Act Applies Prospectively and Cannot Validate a Void Ordinance

Even assuming *arguendo* that the Enabling Act is not an unconstitutional local law, it did not take effect for nearly three years after Chicago enacted its Ordinance. The plain language of the Enabling Act reveals no intent to operate retroactively ("[t]his Act takes effect upon becoming law") (A49) or to validate any preexisting ordinances. The Statute on Statutes accordingly directs that the Enabling Act operate *in futuro* only. 5 ILCS 70/4; *Caveny v. Bower*, 207 Ill. 2d 82, 92 (2003). It is well settled that "a municipal ordinance, invalid because the municipality lacked power to adopt it, is not validated only by the subsequent enactment of an enabling statute." *People ex rel. Larson v. Thompson*, 377 Ill. 104, 109 (1941). Even a true "curative act," passed with the express intention of retroactively remedying an unauthorized exercise of power, could not revive the City's Ordinance. *Johnson v. Edgar*, 176 Ill. 2d 499, 522-23 (1997); *People ex rel. Shore v. Helmer*, 410 Ill. 420 (1951). The General Assembly "cannot by curative act render a void proceeding valid . . . [or] operate to supply a power which was lacking in the first instance"; it matters not whether the lack of authority is "statutory or constitutional" because "subsequent enabling legislation [cannot] . . . bring vitality to [the] otherwise barren attempt of the

municipality to regulate the social evil." *Two Hundred Nine Lake Shore,* 3 Ill. App. 3d at 51 (quoting, in part, *People ex rel. Rhodes v. Miller*, 392 Ill. 445, 449-50 (1946).[15] Simply put, the 2006 Enabling Act could not "give validity to the exercise of a power where such assumed power did not exist at the time it was purported to have been exercised." *In re Cnty. Collector of Kane Cnty.*, 172 Ill. App. 3d 897, 905 (2d Dist. 1988). Chicago lacked power to adopt the Ordinance in 2003 and a 2006 enabling statute cannot "confer posthumously the power." *Larson*, 377 Ill. at 114. The Enabling Act only gave Chicago the power in 2006 to "adopt an ordinance" (A32-33) but Chicago has not yet done that.

Vill. of River Forest v. Midwest Bank & Trust Co., 12 Ill. App. 3d 136, 140 (1st Dist. 1973), is on point. River Forest adopted a 1959 ordinance prohibiting a group of unrelated persons from occupying a single-family home. The court subsequently ruled that the village lacked the legal authority to enact zoning ordinances considering familial connections in 1959, but gained that power when the General Assembly passed an enabling act in 1967. River Forest, however, never re-enacted the ordinance after the passage of this enabling act, nor did it adopt a new ordinance like it, so its ordinance was void. *Id.* The court stated that "legislative validations are

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[15] In reality, Chicago's lack of authority to legislate alternative traffic enforcement schemes has both a statutory and a constitutional dimension, as authority for statutes that restrict or limit the concurrent exercise of home rule powers is itself found in the Constitution, Article VII, Section 6.

limited by the rule that validity cannot be given to assumed municipal power which did not exist when it was exercised." *Id.* at 140. As in *River Forest,* the 2006 Enabling Act did not validate Chicago's void 2003 Ordinance, either retrospectively or prospectively. Chicago likewise failed to re-enact or re-adopt its Ordinance following passage of the Enabling Act; if its Ordinance was void and invalid before May 22, 2006, it remains so today.

B. The Appellate Court's Forfeiture Finding was in Error

The Circuit Court erroneously concluded that once the Enabling Act took effect in 2006, Chicago's program was immediately and "indisputably authorized." Plaintiffs' attempts to dispute this—by explaining that Chicago would still have needed to enact or re-enact a compliant ordinance after the effective date of the Enabling Act—were rejected by the Appellate Court below, which considered the argument waived. But this Court, in its discretion, should consider this issue.

First, this case came before the Circuit Court on a 2-615 Motion. Chicago's moving papers never claimed that the Enabling Act retroactively authorized its ordinance, and so Plaintiffs' response was silent on the issue. The Circuit Court's erroneous conclusion was based on an argument raised for the first time in Chicago's *reply* brief, which stated that "Once plaintiffs' constitutional challenges to the Red Light statute are rejected, *it follows that the Red Light Statute has provided the City with authority to utilize its own*

red light ordinance since May 22, 2006" (emphasis added).[16] It is of course improper to raise new arguments in a reply brief. *See* 210 Ill. 2d Rule 341 (h)(9); *Pajic v. Old Republic Insurance Co.*, 394 Ill. App. 3d 1041, 1051 (1st Dist. 2009). A Motion to Dismiss does not lie as long as a good cause of action is stated, even if that cause of action is not the one intended to be asserted by the plaintiff. *Ill. Graphics Co. v Nickum*, 159 Ill. 2d 469 (1994). The Appellate Court should not have considered as forfeited (or waived) any argument that could have been cured by an amended pleading. *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 197 (1st Dist. 1999).

Second, even if Plaintiffs did forfeit any part of this argument, the Court should still consider it, as the issues here are purely legal, and the City was not deprived of a chance to respond and was not otherwise prejudiced. A court may "overlook forfeiture" (which is of course not a limitation on the court) in light of the "duty to maintain a sound body of precedent." *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 437 (2008)

C. The City Has Never Reenacted an Ordinance, So Its Program Remains Unauthorized

The routine and relatively minor amendments to Chicago's Ordinance over the years do not save its void program. Simply amending a void statute

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[16] To be sure, Chicago has consistently argued that no plaintiff had "standing" to challenge the Ordinance as all of Plaintiffs' Tickets post-dated the Enabling Act. In the face of Plaintiffs' vigorous dispute that this presented an issue of "standing" (or that it was an accurate statement of the law in any event), the Circuit Court accepted Chicago's argument. The Appellate Court reversed in Plaintiffs' favor on this point. (A56)

is no substitute for reenacting it. Both the Statute on Statutes, 5 ILCS 70/2, and several decisions of this Court confirm that amendments to a void law do not reenact it. *U.S. Bank Nat. Ass'n v. Clark*, 216 Ill. 2d 334, 354 (2005). In *Village of Park Forest v. Wojciechowski*, 29 Ill. 2d 435, 438 (1963), this Court held that when an ordinance is amended,

> such portions of the old ordinance as are repeated or retained, either literally or substantially, are to be regarded as a continuation of the old ordinance and *not as the enactment of a new ordinance on the subject or as a repeal of the former ordinance.*

(emphasis added); *see also Dean Milk,* 404 Ill. at 337-38 (1949) (ordinance purporting to amend a void ordinance "is likewise void and of no effect."). Amending an ordinance that is void *ab initio* is akin to transplanting organs into a corpse: the new parts do not bring a stillborn ordinance to life. Chicago indisputably knows how to repeal and reenact chapters of its municipal code, but evidently chooses not to do so here.

CONCLUSION

Plaintiffs respectfully request that this Court reverse the judgments of the appellate and circuit courts and remand this matter to the circuit court for further proceedings.

Dated: October 30, 2013

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 50 pages.

Patrick J. Keating

APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ELIZABETH M. KEATING, PAUL W. KETZ, RANDALL D. GUINN, CAMERON W. MALCOLM, JR., CHARLIE PEACOCK, SHIRLEY PEACOCK, AND JENNIFER P. DIGREGORIO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CITY OF CHICAGO, an Illinois Municipal Corporation,

Defendant.

2011 APR 11 PM 2:42
COOK COUNTY, ILLINOIS
CHANCERY DIV.
DOROTHY BROWN CLERK

Case No. 10 CH 28652

In Chancery – Class Action

Hon. Michael B. Hyman

Calendar 7

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3004

AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Elizabeth M. Keating, Paul W. Ketz, Randall D. Guinn, Cameron W. Malcolm, Jr., Charlie Peacock, Shirley Peacock, and Jennifer P. DiGregorio (collectively, "Plaintiffs"), individually and as representatives of all others similarly situated as described below (the "Plaintiff Class"), by their undersigned attorneys, for their Amended Class Action Complaint against the Defendant, state as follows:

INTRODUCTION

1. In 2003, the Defendant, City of Chicago ("Chicago" or the "City"), initiated a lucrative scheme to utilize so-called "Red Light Cameras" (sometimes referred to herein as "RLCs") to generate revenue on a staggering scale by photographing motor vehicles caught turning at or proceeding through intersections against red signals and then issuing violation notices, by mail, to the vehicles' owner(s) and demanding payment of municipal fines.

2. At the time it began this program in 2003, the City lacked any legal authority to treat moving violations under the Illinois Vehicle Code as municipal

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ordinance violations, or to process and adjudicate them through the City's administrative hearing system. Rather, the Illinois Vehicle Code required citation by a police officer and prosecution in the Circuit Court for such violations.

3. Chicago belatedly sought to legalize its ordinance after the fact and finally pushed a Red Light Camera bill through the Illinois General Assembly in 2006. However, the Illinois General Assembly's attempt at an enabling statute, on its face, falls far short of the requirements of the Illinois Constitution. As a result, the City has never had the legal authority to employ an administrative adjudication system or to utilize Red Light Cameras to enforce ordinary moving violations including red light violations.

4. Chicago currently issues over 700,000 red light violation notices per year. The City's notices originally assessed a fine of $90; that amount has since increased to $100 per violation. Upon information and belief, Chicago's Department of Revenue now collects more than $50 million per year through its red light camera system.

5. As a result, since 2003, the Plaintiff Class has paid more than $250 million to the defendant pursuant to red light violation notices. These fines were collected without legal authority and, under principles of equity, the City has no right to retain them in good conscience. Plaintiffs, on behalf of themselves and all others similarly situated, now seek to have those sums returned to the vehicle owners and motorists from whom they were improperly taken.

PARTIES

6. Plaintiffs Elizabeth M. Keating, Paul W. Ketz, Randall D. Guinn, Cameron W. Malcolm Jr., Charlie Peacock, Shirley Peacock, and Jennifer P. DiGregorio are individual citizens of Illinois and residents of Cook County. Each is a motorist and/or vehicle owner who regularly drives in the City of Chicago.

7. Defendant City of Chicago is a Municipal Corporation existing under the auspices of the Illinois Constitution and Illinois law, and located within Cook County,

Illinois.

SUBSTANTIVE ALLEGATIONS

Red Light Cameras

8. The term "Red Light Cameras" refers generally to photographic recording devices that are mounted at or near road intersections that are controlled by traffic signals. RLCs use sensors that detect when a motor vehicle has crossed a stop line or otherwise entered the intersection. The RLC notes the status of the traffic signal (red, yellow, or green) at the time the sensor is triggered and, if the signal is red, records still photographic images and/or a number of successive frames (constituting a "video clip") showing the traffic signal and the vehicle travelling in the intersection.

9. RLCs thus can detect that a vehicle has crossed into an intersection while the light is red. Although some systems photograph the driver's face, those RLCs used in Chicago photograph the rear license plate and cannot detect who was driving the vehicle when a violation occurred.

10. RLCs typically are used by governments or government agencies to detect moving violations by motor vehicles. This Complaint is concerned only with the use of RLCs in the City of Chicago, Illinois, to detect alleged violations of laws or ordinances requiring motor vehicles to stop for red traffic signals, as described more fully below.

11. RLCs are aggressively promoted by their private third-party vendors and championed by some municipalities as tools to reduce collisions and improve intersection safety. However, the installation of RLCs, without other engineering improvements, does not make intersections safer and most research suggests that RLCs actually decrease intersection safety.

12. This is in part because rear-end collisions are the most common type of collision at intersections controlled by traffic lights. Installation of RLCs generally *increases* the number of rear-end and total collisions at intersections in which they are installed in the United States, as the very real likelihood of a substantial fine adds

another, non-safety-related factor which a motorist must incorporate during the decision interval (stop or proceed) faced when a light turns yellow.

13. By contrast, safety at intersections controlled by traffic lights often can be improved greatly by adjusting upward the duration of yellow lights and/or by extending the "all red" duration at an intersection. Adjusting the timings of traffic signals is an inexpensive way to increase safety, but it does not add a steady revenue stream to municipal coffers.

14. Chicago, however, has adopted yellow light durations which are at the bare minimum of recommendations by the federal government, and does not, as a practice, revise its yellow light durations upward to account for different physical characteristics of intersections, although traffic safety engineers have determined by consensus that lengthening yellow light durations to account for many factors improves safety.

The Illinois Vehicle Code and Illinois Municipal Code

15. The Illinois Vehicle Code prescribes the law regulating the movement of motor vehicles on public roads in Illinois. The state law governing motor vehicles facing steady red signals is contained in § 11-306 of the Illinois Motor Vehicle Code, at 625 ILCS § 5/11-306(c).

16. The Illinois Vehicle Code provides for enforcement of traffic regulations governing the movement of vehicles through a uniform, statewide program. Pursuant to this statewide program, upon an arresting officer issuing a citation, referred to as a "Uniform Citation Notice," the traffic offense is then adjudicated in circuit court. Where adjudication of a traffic offense results in a conviction, the clerk of the court is required to report the conviction to the Secretary of State so that he may monitor and maintain accurate records of repeat offenders and provide a basis for suspending or revoking driver's licenses.

17. Under the uniform statewide program, any fine levied for conviction is

required to be distributed under a prescribed formula to various government bodies, including the State of Illinois and the County and the Municipality in which the violation occurred.

18. Although the violation of some municipal ordinances may be prosecuted through alternative procedures, the Illinois Municipal Code limits which local laws may be subject to such procedures. Since August 22, 1997, and at all times since, 65 ILCS § 5/2.1-2 has provided:

> Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, *except for* (i) proceedings not within the statutory or the home rule authority of municipalities; and (ii) *any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles* and *except for any reportable offense under Section 6-204* of the Illinois Vehicle Code.

(Emphasis added.)

19. Thus, under 65 ILCS § 5/2.1-2, a municipality may provide for the administrative adjudication of certain code violations - but not for violations of traffic regulations governing the movement of vehicles. (Between 1997 and 2006, a limited exception permitted the use of automated enforcement systems only for traffic violations that resulted in or involved a motor vehicle accident, leaving the scene of a motor vehicle accident, or reckless driving that results in bodily injury.)

20. Municipal schemes that purport to adjudicate violations of traffic regulations governing the movement of vehicles without the uniform procedures and protections set forth in the Illinois Vehicle Code have also been adjudged invalid by both the Illinois Attorney General and by the Illinois Appellate Court.

21. In 1992, the Illinois Attorney General issued a formal opinion finding that municipal ordinances allowing for "alternative" civil enforcement of traffic violations outside the Illinois Vehicle Code are not valid under Illinois law and that such

ordinances "conflict with comprehensive traffic regulation and enforcement policy set forth in the Illinois Vehicle Code and the Supreme Court Rules on bail in traffic cases, and deny due process of law". *See* 1992 Op.Atty.Gen. (92-013) (June 22, 1992). The opinion stated that such ordinances were "void and unenforceable."

22. Similarly, in *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App.3d 515, 724 N.E.2d 132, 243 Ill. Dec. 823 (1st Dist. 2000), the Illinois Appellate Court struck down several municipal ordinances that purported to provide municipalities the authority to issue their own violation notices and to fine motorists for moving violations without issuing a Uniform Traffic Citation or reporting the offense to the Secretary of State as required by the Illinois Vehicle Code. The court found that even "home rule" municipalities, which might otherwise be thought to have broad powers, lacked the authority to enact such ordinances.

Use of RLCs in Chicago

23. Upon information and belief, there were no RLCs in use in the State of Illinois prior to 2003.

24. At some time on or before June 6, 2003, Chicago, or some agency or department of the City, began negotiations with a for-profit corporation, Redflex U.S. Inc. ("Redflex") to install RLCs at Chicago intersections. In October 2003, Redflex and the City executed the first of several agreements regarding RLCs.

25. In July 2003, in spite of the proscriptions of the Illinois Vehicle and Municipal Codes, the 1992 Illinois Attorney General Opinion, and the 1999 decision of the First District in *Village of Hanover Park*, the City of Chicago adopted Chapter 9-102 to its Municipal Code, to implement what it terms an "Automated Red Light Camera Program", Chicago Code 9-102-010 *et seq.* ("ARLCP"). The ARLCP provides for a system of linking data generated by RLCs with the City's pre-existing administrative enforcement structure, which had previously been used primarily for adjudication of municipal parking tickets. The ARLCP provides for administrative enforcement of

fines for red light violations captured by RLCs. The ARLCP went active and began photographing vehicles and fining owners, in late 2003.

26. Defendant Chicago uses the ARLCP to issue violation notices to the owners of motor vehicles photographed entering or turning through controlled intersections while the traffic signal facing the vehicle is red.

27. Defendant Chicago uses the ARLCP to enforce fines for such violations administratively, rather than through the Illinois Vehicle Code's uniform statewide program for moving violations.

28. Red-light violations necessarily implicate the movement of vehicles and the defendant City's ARLCP scheme purports to govern the movement of vehicles.

29. Under the ARLCP, no Uniform Traffic Citation is issued (in fact, no officer issues any citation) and the offense is not prosecuted in the Circuit Court. Instead, the RLC notices purport to adjudicate the owner's culpability for violation of laws or ordinances requiring drivers to stop at red lights under the ARLCP's administrative system. The only recourse offered to vehicle owners who dispute their liability is an administrative hearing, at which only limited defenses may be raised.

30. At the Administrative Hearings it runs, the City does not bear any burden of proof and is never called upon to offer evidence that the individual being fined in fact committed the violation. This is especially problematic because the individual being fined is the owner, but not necessarily the driver, of the vehicle photographed by the RLC.

31. No portion of any fine levied and collected by defendant City under the ARLCP is remitted to the State of Illinois or the County of Cook.

32. Upon information and belief, defendant City does not report red-light violations adjudicated under the ARLCP to the Secretary of State even after the motorist or vehicle owner is adjudged liable and pays the fine imposed.

33. Since its inception, the City's ARLCP has functioned outside the uniform

statewide provisions relating to traffic cases.

34. The City's red light violation notices assess fines against vehicle owners under coercion of law and under the threat of adverse legal ramifications including but not limited to a clearly stated threat of adverse consequences to the recipient's driving privileges and vehicle registration and licensing. Further, the City's Web site indicates that the City pursues suspension of driver's licenses for unpaid red-light violation notices.

35. At all relevant times the City has used the ARLCP to detect and administratively prosecute moving violations that did not involve motor vehicle accidents, leaving the scene of an accident, or reckless driving causing personal injury.

36. Chicago's ARLCP has operated continuously and grown steadily since its inception. Published news reports indicate that this system generated revenue, collected from Plaintiffs and other members of the Plaintiff Class, as follows:

2003	$45,660
2004	$4.7 million
2005	$12.7 million
2006	$19.8 million
2007	$44.8 million
2008	$58 million

37. In 2009 and 2010, Chicago's RLC enforcement system issued over 700,000 violation notices each year, representing over $70 million in potential revenue to the City and between $50 million and $65 million in actual collections per annum.

38. At the time Chicago adopted Chapter 9-102 to its Municipal Code, no part of the Illinois Vehicle or Municipal Code authorized the use of RLCs for the detection, or administrative adjudication, of moving violations that did not involve motor vehicle accidents, leaving the scene of an accident, or reckless driving causing personal injury,

in Chicago or any other municipality.

39. On March 3, 2010, the *Chicago Sun Times* reported that the chair of the Finance Committee for Chicago's City Council described as a "myth" the City's claim that the ARLCP was educating and deterring drivers. He was quoted as stating: "It's a money machine, that's all. Period."

Illinois Attempts in 2006 to Authorize Use of RLCs in Eight Specific Counties and the Municipalities in Those Counties

40. Upon information and belief, at some point before May 20, 2005, one or more high ranking officials of Chicago realized that the City's RLC enforcement system was not authorized under Illinois law, and enlisted the aid of one or more members of Chicago's delegation to the Illinois General Assembly to develop and pass a statute ostensibly to legitimize Chicago's illegal RLC enforcement system.

41. Prior to May 22, 2006, the Illinois Vehicle Code allowed municipalities to utilize administrative adjudication procedures only for enforcing laws relating to the "standing, parking, or condition" of motor vehicles.

42. On May 22, 2006, the Illinois General Assembly enacted Public Act 94-795, which purports to authorize RLCs in eight specifically-named Illinois counties. A true and correct copy of P.A. 94-795 is attached hereto as Exhibit "A."

43. P.A. 94-795, which originated in the 94th General Assembly as House Bill ("H.B.") 4835, was described in the press by a RLC lobbyist as "legislative cover" and was in fact designed as legal cover intended to protect the City of Chicago, after the fact, for the ARLCP it had initiated in 2003 without legal authority.

44. P.A. 94-795 added 625 ILCS § 5/11-208.6, and amended 625 ILCS § 5/11-208.3 in the Illinois Vehicle Code. As amended, § 5/11-208.3(a) now provides:

> Any municipality or county may provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations as defined in this subsection *and automated traffic law violations as defined in Section 11-208.6. . . .*

(Emphasis added.)

45. P.A. 94-795 did not amend or change the prohibition against municipal enforcement of moving violations contained in the Illinois Municipal Code, 65 ILCS § 5/2.1-2, as discussed above. This proscription has remained in place at all relevant times.

46. Section 11-208.6 defines an "automated traffic law enforcement system" as "a device with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a red signal indication in violation of Section 11-306 of this Code or a similar provision of a local ordinance." The section prescribes the parameters of such "automated traffic law enforcement system," including the offenses for which the system may be used and the amount of the fines that may be imposed, among other details.

47. At all times since May 22, 2006, Subsection (m) of § 11-208.6 has provided: "This Section [208.6] applies only to the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties."

48. Subsection (m) was added to H.B. 4835 only on the bill's third amendment, filed on February 28, 2006. Prior to that, H.B. 4835, and a very similar bill, H.B. 21, contained no geographic restrictions and would have allowed all municipalities in Illinois to enact RLC schemes. H.B. 21 was defeated 29-25 (3 "present" votes) in the Illinois Senate on May 20, 2005.

49. After its third amendment, which for the first time limited the localities where RLC schemes would ostensibly be allowed to municipalities in only eight of Illinois' 102 counties, H.B. 4835 finally passed the Illinois Senate on March 29, 2006. The bill passed by a narrow vote of 31 "yeas" to 23 "nays" (with one vote "present").

50. Thus, together, §§ 11-208.3 and 11-208.6 authorize the use of RLCs in only

eight of the 102 counties in Illinois.

The Unconstitutionality of P.A. 94-795

51. The limitation of RLCs to just these eight counties violates the Illinois Constitution of 1970 (the "Illinois Constitution") in three ways. First, P.A. 94-795 constitutes "special" and/or "local" legislation, which is prohibited by the Illinois Constitution. Second, the law violates the constitutional requirement of uniformity for non-property taxes or fees assessed by the General Assembly. Third, the law denies equal protection to African-American citizens because they are disproportionately subject to being fined for RLC violations.

52. Article 4, Section 13 of the Illinois Constitution provides: "The 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."

53. P.A. 94-795 is "special" and/or "local" legislation because it confers a benefit on only certain municipalities and counties within the state, to the exclusion of all others similarly situated. It discriminates in favor of a select group without a sound, reasonable basis.

54. The eight counties specifically listed in § 11-208.6(m) are not the eight most populous in Illinois, and were not the eight most populous at the time P.A 94-795 became law, or at any time since.

55. Winnebago County, which is not among the eight counties singled out for special consideration in P.A. 94-795, has and had at all relevant times a population greater than that of either Madison County or St. Clair County.

56. Nor are the eight counties chosen for special treatment by P.A. 94-795 the eight largest by motor vehicle registrations, by motor vehicle collisions, or by any other factor that could be rationally related to any conceivable legislative purpose.

57. Sections 11-208.3 and 11-208.6 purport to authorize the use of automated

traffic law enforcement systems not only by the eight counties listed, but, more significantly, by the municipalities located within those counties. Upon information and belief, no County has enacted a county-wide RLC ordinance, and so all RLC schemes in Illinois are operated by municipalities. In this respect, the limitation to the eight counties is especially irrational because the county in which a municipality happens to be located has no bearing on the perceived need for, or desirability of, RLCs within that municipality.

58. Pursuant to the ostensible authorization of §§ 11-208.3 and 11-208.6, tiny Richmond, Illinois (population 1,874[1], McHenry County), may enact - and, indeed, has enacted - a RLC ordinance and enforcement scheme. However, neither Rockford, Illinois, (population 152,871, Winnebago County) nor Winnebago County itself (population 295,266), may adopt or enforce such an ordinance.

59. This statutory scheme allows the Village of Lenzburg (population 521, St. Clair County) to adopt a RLC ordinance, and would allow it to implement an automated traffic enforcement scheme – if, that is, Lenzburg actually had a traffic signal. However, this law would not allow the state capital, Springfield (population 116,250, Sangamon County), or even Sangamon County itself (population 197,465) to do so.

60. There is no rational basis or conceivable reason why the statutory scheme

[1] Population figures presented in this Amended Complaint are taken from 2010 Census data, as published by the State of Illinois and available at the following Web address: http://www2.illinois.gov/census/Pages/Census2010Data.aspx. The Court may take judicial notice of population figures. While these 2010 population figures are not static and do not reflect exact populations as of the date on which P.A. 94-795 took effect, they are, upon information and belief, sufficiently accurate for purposes of illustrating the point for which they are submitted. Moreover, all allegations in this Amended Complaint bearing on the *relative* populations of the counties mentioned are accurate as of this filing and were also accurate as of the date P.A. 94-795 took effect. Plaintiffs will submit additional support for all population statistics as necessary or as requested by the Court.

discriminates in favor of the municipalities located in eight specifically-named counties, and against all similarly situated municipalities and counties in Illinois.

61. A general law could have been made applicable by the exclusion of the one sentence codified at 625 ILCS 5/11-208.6(m). There is no valid reason why this sentence could not have been excluded and the law made generally applicable.

62. While the statute irrationally *favors* the listed counties and the municipalities in those counties, it irrationally *disfavors* the motorists in those counties and municipalities through the imposition of non-uniform taxes or fees.

63. Article 9, Section 2 of the Illinois Constitution provides in pertinent part: "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly."

64. The fees assessed pursuant to the red-light camera ordinances described in P.A. 94-795 are non-property taxes or fees. The object or subject of these taxes or fees is a red-light violation. That this is a tax or fee is especially clear from the fact that, under the ARLCP, the owner of the vehicle, rather than the driver, is assessed the fine. Thus, liability for the fine is not based on individual culpability, but rather on ownership of a vehicle involved in a red-light incident.

65. Red-light violations are not taxed, or assessed fees, uniformly pursuant to P.A. 94-795. Rather, pursuant to P.A. 94-795, red-light violations are "taxed," and the fees imposed, only in a patchwork of municipalities which happen to be located within the eight counties identified in the legislation. Elsewhere in the state, red-light violations are traffic offenses that are prosecuted only in the Circuit Court, not "taxed" through use of RLCs.

66. The use of RLCs imposes on vehicle owners fees to which vehicle owners in other counties and municipalities are not subject. P.A. 94-795 does not create a reasonable classification of the subjects of the fees it authorizes because only owners of

vehicles operated in the eight specially-treated counties and municipalities therein can ever be subject to the fees.

67. The owners of a vehicle that regularly makes right turns at intersections with traffic signals in Waukegan, Illinois, (population 89,078, Lake County) or Harvard (population 9,447, McHenry County), could be assessed for RLC violations, but the owner of vehicles regularly driven recklessly in Peoria (population 115,007, Peoria County) or Kankakee (population 27,537, Kankakee County) never will.

68. There is no rational basis why the clear financial benefits of RLCs to local governments, and the clear financial detriment to numerous owners of vehicles, may be applied only in certain parts of the state.

69. Finally, the RLC statutory scheme also disproportionately affects African-American or black residents of Illinois.

70. Article 1, Section 2 of the Illinois Constitution provides: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

71. Approximately 86 percent of the African-American or black population of the state resides in the eight counties singled out for special treatment by the Illinois General Assembly in P.A. 94-795. A smaller percentage of the white population of the state resides in those counties as compared to the state overall.

72. The inclusion of St. Clair County, the smallest county by population singled out in P.A. 94-795, juxtaposed against the exclusion of more populous Winnebago County, highlights the impact of the legislation. Winnebago County has more people, more vehicles, and more traffic accidents than St. Clair County. But St. Clair County has more African-Americans. In 2008, St. Clair County was 29.4% black by population. Winnebago County, where vehicle owners never will be subject to a scheme adopted pursuant to P.A. 94-795, has a population that is only 11.4% black. Sangamon County is the next largest Illinois county after St. Clair, and is thus far more

similar to St. Clair than it is, for example, to Cook County; but Sangamon County is not included in the list of special counties where RLCs are authorized. Sangamon County's 2008 population was just 10.9% black.

73. P.A. 94-795 denies African-American Illinois vehicle owners and drivers the "equal protection of the laws" by disproportionately subjecting them to fees for red-light violations as compared with the state's white vehicle owners and drivers.

Plaintiff Elizabeth M. Keating

74. Plaintiff Elizabeth M. Keating is an individual who is and was at all relevant times an Illinois citizen and a resident of Cook County, Illinois.

75. Plaintiff Keating regularly drives through Chicago intersections containing red light cameras and regularly makes right turns on red at Chicago intersections where such turns are legal and at which red light cameras operate. Keating regularly encounters a half dozen or more RLC intersections on the City's south side simply by driving her daughter to swim practice. Plaintiff Keating has received and unsuccessfully contested red light violation notices in other Illinois jurisdictions and reasonably expects and fears that she will receive one or more red light violation notices from the defendant City.

Plaintiff Paul W. Ketz

76. Plaintiff Paul W. Ketz is an individual who was at all relevant times an Illinois citizen and a resident of Cook County, Illinois.

77. On April 26, 2008, a vehicle co-owned by Ketz, but not being driven by him, was photographed by a RLC at or near the intersection of Halsted Street and Belmont Avenue in Chicago.

78. Shortly thereafter, Ketz received in the U.S. mail a notice dated May 17, 2008 entitled "RED LIGHT VIOLATION" and bearing Notice No. 5095986950. The notice alleged that Ketz was liable for a violation and demanded payment of $100 as a fine for the alleged violation.

79. In satisfaction of the notice, Ketz paid money to defendant City. This payment was made under coercion of law and threat of adverse legal consequences.

80. The City of Chicago had no legal authority to demand payment from Ketz.

81. Plaintiff is entitled to restitution of not less than $100.00.

82. The Defendant City has been unjustly enriched in like amount.

Plaintiff Randall D. Guinn

83. Plaintiff Randall D. Guinn is an individual who was at all relevant times an Illinois citizen and a resident of Cook County, Illinois.

84. In August 2009, Guinn received a "Camera Enforcement Violation" notice bearing notice number 5113761380 issued by defendant City alleging that he was liable for a red light violation triggered by his vehicle on the South side of the City earlier that month. The notice demanded payment of $100 as a fine for the alleged violation.

85. In satisfaction of the notice, Guinn paid money to defendant City. This payment was made under coercion of law and threat of adverse legal consequences.

86. The City of Chicago had no legal authority to demand payment from Guinn.

87. Plaintiff is entitled to restitution of not less than $100.00.

88. The Defendant City has been unjustly enriched in like amount.

Plaintiff Cameron W. Malcolm, Jr.

89. Plaintiff Cameron W. Malcolm, Jr. is an individual who was at all relevant times an Illinois citizen and a resident of Cook County, Illinois.

90. In December 2010, Malcolm received a "Camera Enforcement Violation" notice bearing notice number 5131361450 issued by defendant City alleging that he was liable for a red light violation triggered by his vehicle on the Northwest side of the City in November 2010. The notice demanded payment of $100 as a fine for the alleged violation.

91. In satisfaction of the notice, Malcolm paid money to defendant City. This payment was made under coercion of law and threat of adverse legal consequences.

92. The City of Chicago had no legal authority to demand payment from Malcolm.

93. Plaintiff is entitled to restitution of not less than $100.00.

94. The Defendant City has been unjustly enriched in like amount.

Plaintiffs Charlie and Shirley Peacock

95. Plaintiffs Charlie and Shirley Peacock (husband and wife) are African-American individuals who were at all relevant times Illinois citizens and residents of Cook County, Illinois.

96. The Peacocks have received several red light violation notices from Chicago alleging liability for red light violations triggered during Mrs. Peackock's operation of a vehicle owned by Mr. Peacock, occurring at various locations in the City between 2003 and the present. These notices demanded payment of fines for the alleged violations.

97. In satisfaction of these notices, Plaintiffs Charlie and Shirley Peacock paid money to defendant City. These payments were made under coercion of law and threat of adverse legal consequences.

98. The City of Chicago had no legal authority to demand payment from Plaintiffs Charlie and Shirley Peacock.

99. Plaintiffs contested one or more of these violations by mail, without success.

100. Plaintiffs are entitled to restitution of not less than $270.00.

101. The Defendant City has been unjustly enriched in like amount.

Plaintiff Jennifer P. DiGregorio

102. Plaintiff Jennifer P. DiGregorio is an individual who was at all relevant times an Illinois citizen and a resident of Lemont, Illinois.

103. In October 2010, DiGregorio received a "Camera Enforcement Violation" notice bearing notice no. 5129178000 issued by defendant City alleging she was liable for a red light violation triggered by her vehicle on the west side of the City in September 2010. The notice demanded payment of $100 as a fine for the alleged violation.

104. DiGregorio elected to challenge her notice at an administrative hearing, which was held on December 27, 2010.

105. At the hearing, DiGregorio appeared with counsel and with a retained video analysis expert.

106. Her counsel attempted to raise the same constitutional challenges contained in this Complaint and was advised by the hearing officer that constitutional challenges were outside the scope of an administrative hearing in Chicago and so would not be entertained or considered.

107. Even so, at the hearing, DiGregorio, through her counsel, also established uncontroverted evidence that the violation notice did not comply with the requirements of 735 ILCS 5/11-208.6. Her video expert provided uncontroverted evidence that, after a frame by frame analysis of the video captured by the RLC, the amber (yellow light) duration of the traffic signal at issue did not meet even Chicago's own minimum duration.

108. Nonetheless, DiGregorio was adjudged liable.

109. General Order No 1.2(b)(1) of the Cook County Circuit Court directs that Administrative Review Actions be filed in this Court, where the filing fee is nearly three times the amount at issue in a single-violation RLC case.

110. In satisfaction of the decision, DiGregorio paid the $100 to defendant City. This payment was made under coercion of law and threat of adverse legal consequences.

111. The City of Chicago had no legal authority to demand payment from

DiGregorio.

112. Plaintiff is entitled to restitution of not less than $100.00.

113. The defendant City has been unjustly enriched in like amount.

Suitability of Class Action Mechanism

114. Plaintiffs bring this action for themselves individually, and as the representatives of a class of all other similarly situated plaintiffs. Plaintiffs initially describe the Plaintiff Class as:

> All persons who received a "Red Light Violation" or "Violation Notice" or similar communication, issued by or in the name of the CITY OF CHICAGO or any agent or department of the City, including its Department of Revenue, which Notice alleged or asserted any traffic signal violation of the Illinois Motor Vehicle Code or the Chicago Municipal Code, where such Notice was generated in whole or in part based on images generated by a "Red Light Camera" or Automated Traffic Enforcement System, and who, by reason thereof, suffered an adverse legal consequence, including: imposition of a fee, fine, penalty or surcharge.

115. The Plaintiff Class is so numerous that joinder of all members of the class is impracticable. Plaintiffs do not know the exact size of the class because such information is in the exclusive control of defendant City. The exact number and identity of all class members may be determined by appropriate discovery, but it is Plaintiffs' belief that the number is in the hundreds of thousands.

116. There are questions of fact and law common to the class, which common questions predominate over questions affecting only individual members. Those common questions include:

a. Whether defendant City instituted its ARLCP without legal authority, rendering the scheme void;

b. Whether the ostensible enabling act, P.A. 94-795, is unconstitutional "special" and/or "local" legislation in that the law could have been made generally applicable without limiting same to eight specifically-identified

counties;

c. Whether the ostensible enabling act, P.A. 94-795, is unconstitutional for its imposition of a non-property tax or fee on red-light violations in an unfair or non-uniform manner, in violation of Article 9, Section 2 of the Illinois Constitution;

d. Whether the ostensible enabling act, P.A. 94-795, is unconstitutional for denying African-American Illinois vehicle owners and motorists the "equal protection of the laws" by disproportionately subjecting them to fees for red-light violations as compared with the state's white vehicle owners and motorists, in violation of Article 1, Section 2 of the Illinois Constitution;

e. Whether Chicago's ARLCP unconstitutionally deprives motor vehicle owners of due process of law under the Illinois Constitution by imposing fines on owners without any evidence that the owner was driving the car at the time of the alleged red-light violation; and

f. Whether defendant City demanded payments from the Plaintiff Class without legal authority and must, in good conscience and equity, provide restitution of such payments.

117. Plaintiffs can and will fairly and adequately represent the interests of the Plaintiff Class and have no interests that conflict with or are antagonistic to the interests of the Plaintiff Class. Plaintiffs have retained attorneys who are highly skilled, competent, and experienced in class action litigation. No conflict exists between Plaintiffs and the Plaintiff Class.

118. The class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

a. Common questions of fact and law predominate over any individual questions that may arise, such that there will be enormous economies to

the Court and the parties in litigating the common issues in a class action instead of in multiple individual claims;

b. The Plaintiff Class members' individual claims are too small to make individual litigation an economically viable alternative;

c. Class treatment is required for optimal restitution and for limiting the court-awarded reasonable legal expenses incurred by class members;

d. Despite the relatively small size of individual class members' claims, their aggregate volume, coupled with the economies of scale in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with the cost of individual litigation; and

e. The trial of this case as a class action will be fair and efficient because the questions of law and fact which are common to the Plaintiff Class predominate over any individual issues that may arise.

CLAIM FOR RELIEF

Declaratory Judgment that ARLCP Is Invalid as Unauthorized and Chicago Must Make Restitution to Avoid Unjust Enrichment

119. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 118 as if fully set forth herein.

120. Plaintiffs have no adequate remedy at law where, as here, they have been fined under an ordinance outside the City's power to enact, purportedly authorized (after the fact) by an unconstitutional enabling statute.

121. Chicago's ARLCP is invalid because it is not, and never has been, authorized by Illinois law and is in violation of the Illinois Municipal Code, 65 ILCS 5/1-2.1-2.

122. At the time the ARLCP was adopted, no law purported to authorize it.

123. At the time the ARLCP was adopted, Illinois law clearly limited the power of municipalities to use administrative procedures to enforce ordinances and

specifically precluded municipalities from using such procedures to enforce traffic regulations governing the movement of vehicles.

124. Ordinances prohibiting motorists from entering an intersection while a signal is red are traffic regulations governing the movement of vehicles. Enforcement of such regulations requires the issuance of a uniform citation, prosecution in circuit court and, where adjudication of a traffic offense results in a conviction, a report to the Secretary of State and a portion of any fine money to be allocated to the state and/or county, all in accordance with applicable law.

125. The ARLCP uses administrative procedures to enforce traffic regulations governing the movement of vehicles, in violation of the Illinois Municipal Code.

126. At the time the ARLCP was adopted, it was in violation of and frustrated the uniformity provisions of the Illinois Vehicle Code.

127. P.A. 94-795 did not retroactively authorize the use of the ARLCP prior to May 22, 2006.

128. P.A. 94-795 did not authorize the use of the ARLCP on or after May 22, 2006, because P.A. 94-795 is unconstitutional, invalid, and void *ab initio*, with no force or effect.

129. P.A. 94-795 is invalid and unconstitutional because it constitutes "special" or "local" legislation in violation of Article 4, Section 13 of the Illinois Constitution.

130. A general law could have been made applicable by the exclusion of the single sentence codified at 625 ILCS 5/11-208.6(m). There is no valid reason why this sentence could not have been excluded and the law made generally applicable.

131. P.A. 94-795 is also invalid and unconstitutional because it assesses a non-property tax or fee on red-light violations, but does not do so uniformly, in violation of Article 9, Section 2 of the Illinois Constitution.

132. P.A. 94-795 is further invalid and unconstitutional because it disproportionately imposes fines on African-American Illinois vehicle owners and

drivers, and thus deprives them of the equal protection of laws guaranteed by Article 1, Section 2 of the Illinois Constitution.

133. Because P.A. 94-795 is invalid, its purported grant of authority to the eight counties, and the municipalities within those counties, including defendant Chicago, is null and void.

134. To the extent that P.A. 94-795 is constitutionally invalid, Chicago's ARLCP remains unauthorized, beyond the scope of Chicago's power to enact, and in violation of both the Illinois Vehicle Code and the Illinois Municipal Code, 65 ILCS 5/1-2.1-2.

135. In addition, the ARLPC violates the Illinois Constitution because it imposes fines on vehicle owners without due process of law and without any evidence that the vehicle owner committed the underlying violation.

136. To the extent that the ARLCP is invalid, beyond the scope of Chicago's power to enforce, and/or unconstitutional, all fines collected pursuant to this invalid program were unauthorized and obtained without due process of law, because at the time they were collected, Chicago had no authority to exact such fines.

137. To the extent that the ARLCP is invalid, beyond the scope of Chicago's power to enforce, and/or unconstitutional, defendant City of Chicago has been unjustly enriched, with the measure of such unjust enrichment equal to at least all fees collected pursuant to this invalid program.

138. Chicago has been unjustly enriched by the full amount of fines or fees collected by its ARLCP, which Plaintiffs believe now exceeds $250 million. Upon information and belief, all or substantially all of these funds have been deposited into Chicago's general Revenue Fund(s) and have not been earmarked for traffic safety or other related purposes.

139. As a result of the Chicago's unauthorized and unlawful ARLCP, plaintiffs Paul W. Ketz, Randall D. Guinn, Cameron W. Malcolm, Jr., Charlie and Shirley

Peacock, and Jennifer P. DiGregorio, and all other members of the Plaintiff Class, have been forced to remit monies to defendant City under coercion of law and threat of adverse legal consequences. Defendant City has been unjustly enriched by these monies. Plaintiffs and the Plaintiff Class are entitled to restitution of these monies.

140. Only this Court, in granting the equitable relief requested below, can rectify this unjust enrichment of the defendant City at the expense of Plaintiffs and the Plaintiff Class, and prevent the defendant City's further unjust enrichment, to the detriment of the hundreds of additional vehicle owners who are being added to the Plaintiff Class each day.

WHEREFORE, Plaintiffs, individually and on behalf of the Plaintiff Class, pray for relief as follows:

A. A declaratory judgment and/or order declaring that defendant Chicago's ARLCP was invalid from its inception until May 22, 2006 because it is and was beyond the power of Chicago to adopt, disrupted the uniformity of the statewide program under the Illinois Vehicle Code and otherwise, and was in direct violation of Illinois Municipal Code, 65 ILCS § 5/2.1-2;

B. A declaratory judgment and/or order declaring that, after the enactment of P.A. 94-795, Chicago's ARLCP was still invalid as unauthorized and beyond the power of Chicago to adopt, because P.A. 94-795, and the sections of the Illinois Compiled Statutes Annotated which it created or materially amended, are, on their face, in violation of the Illinois Constitution of 1970, and so are void and of no effect;

C. An injunction precluding Chicago from any further activity to collect fees, fines, taxes or penalties under its ARLCP or any similar program;

D. Certification of the Plaintiff Class as set forth herein and appointment of Plaintiffs' counsel to represent the Plaintiff Class;

E. An order requiring Chicago to make full restitution to Plaintiffs, and to all members of the Plaintiff Class, of all funds illegally and improperly collected by Chicago pursuant to the ARLCP since its inception; and

F. Such further relief as allowed in equity and as this Court deems just.

Dated: Chicago, Illinois
April 11, 2011

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AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by changing Sections 6-306.5, 11-208, 11-208.3, and 11-306 and adding Sections 1-105.2, 11-208.6, and 11-612 as follows:

(625 ILCS 5/1-105.2 new)

Sec. 1-105.2. Automated traffic law violation. A violation described in Section 11-208.6 of this Code.

(625 ILCS 5/6-306.5) (from Ch. 95 1/2, par. 6-306.5)

Sec. 6-306.5. Failure to pay fine or penalty for standing, parking, ~~or~~ compliance, or automated traffic law violations; suspension of driving privileges.

(a) Upon receipt of a certified report, as prescribed by subsection (c) of this Section, from any municipality stating that the owner of a registered vehicle has: (1) failed to pay any fine or penalty due and owing as a result of 10 or more violations of a municipality's vehicular standing, parking, or compliance regulations established by ordinance pursuant to Section 11-208.3 of this Code, or (2) failed to pay any fine or penalty due and owing as a result of 5 offenses for automated traffic violations as defined in Section 11-208.6, the Secretary of State shall suspend the driving privileges of such person in accordance with the procedures set forth in this Section. The Secretary shall also suspend the driving privileges of an owner of a registered vehicle upon receipt of a certified report, as prescribed by subsection (f) of this Section, from any municipality stating that such person has failed to satisfy any fines or penalties imposed by final judgments for 5 or more automated traffic law violations or 10 or more violations of local standing, parking, or compliance

EXHIBIT A

regulations after exhaustion of judicial review procedures.

(b) Following receipt of the certified report of the municipality as specified in this Section, the Secretary of State shall notify the person whose name appears on the certified report that the person's drivers license will be suspended at the end of a specified period of time unless the Secretary of State is presented with a notice from the municipality certifying that the fine or penalty due and owing the municipality has been paid or that inclusion of that person's name on the certified report was in error. The Secretary's notice shall state in substance the information contained in the municipality's certified report to the Secretary, and shall be effective as specified by subsection (c) of Section 6-211 of this Code.

(c) The report of the appropriate municipal official notifying the Secretary of State of unpaid fines or penalties pursuant to this Section shall be certified and shall contain the following:

(1) The name, last known address as recorded with the Secretary of State, as provided by the lessor of the cited vehicle at the time of lease, or as recorded in a United States Post Office approved database if any notice sent under Section 11-208.3 of this Code is returned as undeliverable, and drivers license number of the person who failed to pay the fine or penalty and the registration number of any vehicle known to be registered to such person in this State.

(2) The name of the municipality making the report pursuant to this Section.

(3) A statement that the municipality sent a notice of impending drivers license suspension as prescribed by ordinance enacted pursuant to Section 11-208.3, to the person named in the report at the address recorded with the Secretary of State or at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice sent under Section 11-208.3 of this Code is returned

as undeliverable, at the last known address recorded in a United States Post Office approved database; the date on which such notice was sent; and the address to which such notice was sent. In a municipality with a population of 1,000,000 or more, the report shall also include a statement that the alleged violator's State vehicle registration number and vehicle make, if specified on the automated traffic law violation notice, are correct as they appear on the citations.

(d) Any municipality making a certified report to the Secretary of State pursuant to this Section shall notify the Secretary of State, in a form prescribed by the Secretary, whenever a person named in the certified report has paid the previously reported fine or penalty or whenever the municipality determines that the original report was in error. A certified copy of such notification shall also be given upon request and at no additional charge to the person named therein. Upon receipt of the municipality's notification or presentation of a certified copy of such notification, the Secretary of State shall terminate the suspension.

(e) Any municipality making a certified report to the Secretary of State pursuant to this Section shall also by ordinance establish procedures for persons to challenge the accuracy of the certified report. The ordinance shall also state the grounds for such a challenge, which may be limited to (1) the person not having been the owner or lessee of the vehicle or vehicles receiving 10 or more standing, parking, or compliance violation notices or 5 or more automated traffic law violations on the date or dates such notices were issued; and (2) the person having already paid the fine or penalty for the 10 or more standing, parking, or compliance violations or 5 or more automated traffic law violations indicated on the certified report.

(f) Any municipality, other than a municipality establishing vehicular standing, parking, and compliance regulations pursuant to Section 11-208.3 or automated traffic

law regulations under Section 11-208.6, may also cause a suspension of a person's drivers license pursuant to this Section. Such municipality may invoke this sanction by making a certified report to the Secretary of State upon a person's failure to satisfy any fine or penalty imposed by final judgment for 10 or more violations of local standing, parking, or compliance regulations or 5 or more automated traffic law violations after exhaustion of judicial review procedures, but only if:

(1) the municipality complies with the provisions of this Section in all respects except in regard to enacting an ordinance pursuant to Section 11-208.3;

(2) the municipality has sent a notice of impending drivers license suspension as prescribed by an ordinance enacted pursuant to subsection (g) of this Section; and

(3) in municipalities with a population of 1,000,000 or more, the municipality has verified that the alleged violator's State vehicle registration number and vehicle make are correct as they appear on the citations.

(g) Any municipality, other than a municipality establishing standing, parking, and compliance regulations pursuant to Section 11-208.3 or automated traffic law regulations under Section 11-208.6, may provide by ordinance for the sending of a notice of impending drivers license suspension to the person who has failed to satisfy any fine or penalty imposed by final judgment for 10 or more violations of local standing, parking, or compliance regulations or 5 or more automated traffic law violations after exhaustion of judicial review procedures. An ordinance so providing shall specify that the notice sent to the person liable for any fine or penalty shall state that failure to pay the fine or penalty owing within 45 days of the notice's date will result in the municipality notifying the Secretary of State that the person's drivers license is eligible for suspension pursuant to this Section. The notice of impending drivers license suspension shall be sent by first class United States mail, postage

prepaid, to the address recorded with the Secretary of State or at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice sent under Section 11-208.3 of this Code is returned as undeliverable, to the last known address recorded in a United States Post Office approved database.

(h) An administrative hearing to contest an impending suspension or a suspension made pursuant to this Section may be had upon filing a written request with the Secretary of State. The filing fee for this hearing shall be $20, to be paid at the time the request is made. A municipality which files a certified report with the Secretary of State pursuant to this Section shall reimburse the Secretary for all reasonable costs incurred by the Secretary as a result of the filing of the report, including but not limited to the costs of providing the notice required pursuant to subsection (b) and the costs incurred by the Secretary in any hearing conducted with respect to the report pursuant to this subsection and any appeal from such a hearing.

(i) The provisions of this Section shall apply on and after January 1, 1988.

(j) For purposes of this Section, the term "compliance violation" is defined as in Section 11-208.3.

(Source: P.A. 94-294, eff. 1-1-06.)

(625 ILCS 5/11-208) (from Ch. 95 1/2, par. 11-208)

Sec. 11-208. Powers of local authorities.

(a) The provisions of this Code shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles, except as limited by Section 11-1306 of this Act;

2. Regulating traffic by means of police officers or traffic control signals;

3. Regulating or prohibiting processions or

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assemblages on the highways;

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 11-604;

6. Designating any highway as a through highway, as authorized in Section 11-302, and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection or a yield right-of-way intersection and requiring all vehicles to stop or yield the right-of-way at one or more entrances to such intersections;

7. Restricting the use of highways as authorized in Chapter 15;

8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

10. Altering the speed limits as authorized in Section 11-604;

11. Prohibiting U-turns;

12. Prohibiting pedestrian crossings at other than designated and marked crosswalks or at intersections;

13. Prohibiting parking during snow removal operation;

14. Imposing fines in accordance with Section 11-1301.3 as penalties for use of any parking place reserved for persons with disabilities, as defined by Section 1-159.1, or disabled veterans by any person using a motor vehicle not bearing registration plates specified in Section 11-1301.1 or a special decal or device as defined in Section 11-1301.2 as evidence that the vehicle is operated by or for a person with disabilities or disabled veteran;

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15. Adopting such other traffic regulations as are specifically authorized by this Code; or

16. Enforcing the provisions of subsection (f) of Section 3-413 of this Code or a similar local ordinance.

(b) No ordinance or regulation enacted under subsections 1, 4, 5, 6, 7, 9, 10, 11 or 13 of paragraph (a) shall be effective until signs giving reasonable notice of such local traffic regulations are posted.

(c) The provisions of this Code shall not prevent any municipality having a population of 500,000 or more inhabitants from prohibiting any person from driving or operating any motor vehicle upon the roadways of such municipality with headlamps on high beam or bright.

(d) The provisions of this Code shall not be deemed to prevent local authorities within the reasonable exercise of their police power from prohibiting, on private property, the unauthorized use of parking spaces reserved for persons with disabilities.

(e) No unit of local government, including a home rule unit, may enact or enforce an ordinance that applies only to motorcycles if the principal purpose for that ordinance is to restrict the access of motorcycles to any highway or portion of a highway for which federal or State funds have been used for the planning, design, construction, or maintenance of that highway. No unit of local government, including a home rule unit, may enact an ordinance requiring motorcycle users to wear protective headgear. Nothing in this subsection (e) shall affect the authority of a unit of local government to regulate motorcycles for traffic control purposes or in accordance with Section 12-602 of this Code. No unit of local government, including a home rule unit, may regulate motorcycles in a manner inconsistent with this Code. This subsection (e) is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(f) A municipality or county designated in Section

11-208.6 may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of this Code or a similar provision of a local ordinance and imposing liability on a registered owner of a vehicle used in such a violation.

(Source: P.A. 90-106, eff. 1-1-98; 90-513, eff. 8-22-97; 90-655, eff. 7-30-98; 91-519, eff. 1-1-00.)

(625 ILCS 5/11-208.3) (from Ch. 95 1/2, par. 11-208.3)

Sec. 11-208.3. Administrative adjudication of violations of traffic regulations concerning the standing, parking, or condition of vehicles and automated traffic law violations.

(a) Any municipality may provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations as defined in this subsection and automated traffic law violations as defined in Section 11-208.6. The administrative system shall have as its purpose the fair and efficient enforcement of municipal regulations through the administrative adjudication of automated traffic law violations and violations of municipal ordinances regulating the standing and parking of vehicles, the condition and use of vehicle equipment, and the display of municipal wheel tax licenses within the municipality's borders. The administrative system shall only have authority to adjudicate civil offenses carrying fines not in excess of $250 that occur after the effective date of the ordinance adopting such a system under this Section. For purposes of this Section, "compliance violation" means a violation of a municipal regulation governing the condition or use of equipment on a vehicle or governing the display of a municipal wheel tax license.

(b) Any ordinance establishing a system of administrative adjudication under this Section shall provide for:

(1) A traffic compliance administrator authorized to adopt, distribute and process parking, ~~and~~ compliance, and automated traffic law violation notices and other notices

required by this Section, collect money paid as fines and penalties for violation of parking and compliance ordinances and automated traffic law violations, and operate an administrative adjudication system. The traffic compliance administrator also may make a certified report to the Secretary of State under Section 6-306.5.

(2) A parking, standing, ~~or~~ compliance, or automated traffic law violation notice that shall specify the date, time, and place of violation of a parking, standing, or compliance, or automated traffic law regulation; the particular regulation violated; the fine and any penalty that may be assessed for late payment, when so provided by ordinance; the vehicle make and state registration number; and the identification number of the person issuing the notice. With regard to automated traffic law violations, vehicle make shall be specified on the automated traffic law violation notice if the make is available and readily discernible. With regard to municipalities with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the State registration number or vehicle make specified is incorrect. The violation notice shall state that the payment of the indicated fine, and of any applicable penalty for late payment, shall operate as a final disposition of the violation. The notice also shall contain information as to the availability of a hearing in which the violation may be contested on its merits. The violation notice shall specify the time and manner in which a hearing may be had.

(3) Service of the parking, standing, or compliance violation notice by affixing the original or a facsimile of the notice to an unlawfully parked vehicle or by handing the notice to the operator of a vehicle if he or she is present and service of an automated traffic law violation notice by mail to the address of the registered owner of the cited vehicle as recorded with the Secretary of State within 30 days after the Secretary of State notifies the

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municipality or county of the identity of the owner of the vehicle, but in no event later than 90 days after the violation. A person authorized by ordinance to issue and serve parking, standing, and compliance violation notices shall certify as to the correctness of the facts entered on the violation notice by signing his or her name to the notice at the time of service or in the case of a notice produced by a computerized device, by signing a single certificate to be kept by the traffic compliance administrator attesting to the correctness of all notices produced by the device while it was under his or her control. In the case of an automated traffic law violation, the ordinance shall require a determination by a technician employed or contracted by the municipality or county that, based on inspection of recorded images, the motor vehicle was being operated in violation of Section 11-208.6 or a local ordinance. If the technician determines that the vehicle entered the intersection as part of a funeral procession or in order to yield the right-of-way to an emergency vehicle, a citation shall not be issued. The original or a facsimile of the violation notice or, in the case of a notice produced by a computerized device, a printed record generated by the device showing the facts entered on the notice, shall be retained by the traffic compliance administrator, and shall be a record kept in the ordinary course of business. A parking, standing, ~~or~~ compliance, or automated traffic law violation notice issued, signed and served in accordance with this Section, a copy of the notice, or the computer generated record shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice. The notice, copy, or computer generated record shall be admissible in any subsequent administrative or legal proceedings.

(4) An opportunity for a hearing for the registered owner of the vehicle cited in the parking, standing, ~~or~~

compliance, or automated traffic law violation notice in which the owner may contest the merits of the alleged violation, and during which formal or technical rules of evidence shall not apply; provided, however, that under Section 11-1306 of this Code the lessee of a vehicle cited in the violation notice likewise shall be provided an opportunity for a hearing of the same kind afforded the registered owner. The hearings shall be recorded, and the person conducting the hearing on behalf of the traffic compliance administrator shall be empowered to administer oaths and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. Persons appearing at a hearing under this Section may be represented by counsel at their expense. The ordinance may also provide for internal administrative review following the decision of the hearing officer.

(5) Service of additional notices, sent by first class United States mail, postage prepaid, to the address of the registered owner of the cited vehicle as recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database, or, under Section 11-1306 of this Code, to the lessee of the cited vehicle at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database. The service shall be deemed complete as of the date of deposit in the United States mail. The notices shall be in the following sequence and shall include but not be limited to the information specified herein:

(i) A second notice of parking, standing, or compliance violation. This notice shall specify the date and location of the violation cited in the parking, standing, or compliance violation notice, the

particular regulation violated, the vehicle make and state registration number, the fine and any penalty that may be assessed for late payment when so provided by ordinance, the availability of a hearing in which the violation may be contested on its merits, and the time and manner in which the hearing may be had. The notice of violation shall also state that failure either to pay the indicated fine and any applicable penalty, or to appear at a hearing on the merits in the time and manner specified, will result in a final determination of violation liability for the cited violation in the amount of the fine or penalty indicated, and that, upon the occurrence of a final determination of violation liability for the failure, and the exhaustion of, or failure to exhaust, available administrative or judicial procedures for review, any unpaid fine or penalty will constitute a debt due and owing the municipality.

(ii) A notice of final determination of parking, standing, ~~or~~ compliance, or automated traffic law violation liability. This notice shall be sent following a final determination of parking, standing, ~~or~~ compliance, or automated traffic law violation liability and the conclusion of judicial review procedures taken under this Section. The notice shall state that the unpaid fine or penalty is a debt due and owing the municipality. The notice shall contain warnings that failure to pay any fine or penalty due and owing the municipality within the time specified may result in the municipality's filing of a petition in the Circuit Court to have the unpaid fine or penalty rendered a judgment as provided by this Section, or may result in suspension of the person's drivers license for failure to pay fines or penalties for 10 or more parking violations under Section 6-306.5 or 5 or more automated traffic law violations under Section

11-208.6.

(6) A Notice of impending drivers license suspension. This notice shall be sent to the person liable for any fine or penalty that remains due and owing on 10 or more parking violations or 5 or more unpaid automated traffic law violations. The notice shall state that failure to pay the fine or penalty owing within 45 days of the notice's date will result in the municipality notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under Section 6-306.5 of this Code. The notice shall also state that the person may obtain a photostatic copy of an original ticket imposing a fine or penalty by sending a self addressed, stamped envelope to the municipality along with a request for the photostatic copy. The notice of impending drivers license suspension shall be sent by first class United States mail, postage prepaid, to the address recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database.

(7) Final determinations of violation liability. A final determination of violation liability shall occur following failure to pay the fine or penalty after a hearing officer's determination of violation liability and the exhaustion of or failure to exhaust any administrative review procedures provided by ordinance. Where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified in a prior mailed notice, the hearing officer's determination of violation liability shall become final: (A) upon denial of a timely petition to set aside that determination, or (B) upon expiration of the period for filing the petition without a filing having been made.

(8) A petition to set aside a determination of parking, standing, ~~or~~ compliance, or automated traffic law violation liability that may be filed by a person owing an

unpaid fine or penalty. The petition shall be filed with and ruled upon by the traffic compliance administrator in the manner and within the time specified by ordinance. The grounds for the petition may be limited to: (A) the person not having been the owner or lessee of the cited vehicle on the date the violation notice was issued, (B) the person having already paid the fine or penalty for the violation in question, and (C) excusable failure to appear at or request a new date for a hearing. With regard to municipalities with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the State registration number, or vehicle make if specified, is incorrect. After the determination of parking, standing, ~~or~~ compliance, or automated traffic law violation liability has been set aside upon a showing of just cause, the registered owner shall be provided with a hearing on the merits for that violation.

(9) Procedures for non-residents. Procedures by which persons who are not residents of the municipality may contest the merits of the alleged violation without attending a hearing.

(10) A schedule of civil fines for violations of vehicular standing, parking, ~~and~~ compliance, or automated traffic law regulations enacted by ordinance pursuant to this Section, and a schedule of penalties for late payment of the fines, provided, however, that the total amount of the fine and penalty for any one violation shall not exceed $250.

(11) Other provisions as are necessary and proper to carry into effect the powers granted and purposes stated in this Section.

(c) Any municipality establishing vehicular standing, parking, ~~and~~ compliance, or automated traffic law regulations under this Section may also provide by ordinance for a program of vehicle immobilization for the purpose of facilitating enforcement of those regulations. The program of vehicle

immobilization shall provide for immobilizing any eligible vehicle upon the public way by presence of a restraint in a manner to prevent operation of the vehicle. Any ordinance establishing a program of vehicle immobilization under this Section shall provide:

(1) Criteria for the designation of vehicles eligible for immobilization. A vehicle shall be eligible for immobilization when the registered owner of the vehicle has accumulated the number of unpaid final determinations of parking, standing, ~~or~~ compliance, or automated traffic law violation liability as determined by ordinance.

(2) A notice of impending vehicle immobilization and a right to a hearing to challenge the validity of the notice by disproving liability for the unpaid final determinations of parking, standing, ~~or~~ compliance, or automated traffic law violation liability listed on the notice.

(3) The right to a prompt hearing after a vehicle has been immobilized or subsequently towed without payment of the outstanding fines and penalties on parking, standing, ~~or~~ compliance, or automated traffic law violations for which final determinations have been issued. An order issued after the hearing is a final administrative decision within the meaning of Section 3-101 of the Code of Civil Procedure.

(4) A post immobilization and post-towing notice advising the registered owner of the vehicle of the right to a hearing to challenge the validity of the impoundment.

(d) Judicial review of final determinations of parking, standing, ~~and~~ compliance, or automated traffic law violations and final administrative decisions issued after hearings regarding vehicle immobilization and impoundment made under this Section shall be subject to the provisions of the Administrative Review Law.

(e) Any fine, penalty, or part of any fine or any penalty remaining unpaid after the exhaustion of, or the failure to

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exhaust, administrative remedies created under this Section and the conclusion of any judicial review procedures shall be a debt due and owing the municipality and, as such, may be collected in accordance with applicable law. Payment in full of any fine or penalty resulting from a standing, parking, ~~or~~ compliance, or automated traffic law violation shall constitute a final disposition of that violation.

(f) After the expiration of the period within which judicial review may be sought for a final determination of parking, standing, ~~or~~ compliance, or automated traffic law violation, the municipality may commence a proceeding in the Circuit Court for purposes of obtaining a judgment on the final determination of violation. Nothing in this Section shall prevent a municipality from consolidating multiple final determinations of parking, standing, ~~or~~ compliance, or automated traffic law violations ~~violation~~ against a person in a proceeding. Upon commencement of the action, the municipality shall file a certified copy or record of the final determination of parking, standing, ~~or~~ compliance, or automated traffic law violation, which shall be accompanied by a certification that recites facts sufficient to show that the final determination of violation was issued in accordance with this Section and the applicable municipal ordinance. Service of the summons and a copy of the petition may be by any method provided by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines and penalties for final determinations of parking, standing, ~~or~~ compliance, or automated traffic law violations does not exceed $2500. If the court is satisfied that the final determination of parking, standing, ~~or~~ compliance, or automated traffic law violation was entered in accordance with the requirements of this Section and the applicable municipal ordinance, and that the registered owner or the lessee, as the case may be, had an opportunity for an administrative hearing and for judicial review as provided in this Section, the court shall render judgment in favor of the

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municipality and against the registered owner or the lessee for the amount indicated in the final determination of parking, standing, ~~or~~ compliance, or automated traffic law violation, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.

(Source: P.A. 94-294, eff. 1-1-06.)

(625 ILCS 5/11-208.6 new)

Sec. 11-208.6. Automated traffic law enforcement system.

(a) As used in this Section, "automated traffic law enforcement system" means a device with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a red signal indication in violation of Section 11-306 of this Code or a similar provision of a local ordinance.

An automated traffic law enforcement system is a system, in a municipality or county operated by a governmental agency, that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance and is designed to obtain a clear recorded image of the vehicle and the vehicle's license plate. The recorded image must also display the time, date, and location of the violation.

(b) As used in this Section, "recorded images" means images recorded by an automated traffic law enforcement system on:

(1) 2 or more photographs;

(2) 2 or more microphotographs;

(3) 2 or more electronic images; or

(4) a video recording showing the motor vehicle and, on at least one image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.

(c) A county or municipality, including a home rule county or municipality, may not use an automated traffic law

enforcement system to provide recorded images of a motor vehicle for the purpose of recording its speed. The regulation of the use of automated traffic law enforcement systems to record vehicle speeds is an exclusive power and function of the State. This subsection (c) is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(d) For each violation of a provision of this Code or a local ordinance recorded by an automatic traffic law enforcement system, the county or municipality having jurisdiction shall issue a written notice of the violation to the registered owner of the vehicle as the alleged violator. The notice shall be delivered to the registered owner of the vehicle, by mail, within 30 days after the Secretary of State notifies the municipality or county of the identity of the owner of the vehicle, but in no event later than 90 days after the violation.

The notice shall include:

(1) the name and address of the registered owner of the vehicle;

(2) the registration number of the motor vehicle involved in the violation;

(3) the violation charged;

(4) the location where the violation occurred;

(5) the date and time of the violation;

(6) a copy of the recorded images;

(7) the amount of the civil penalty imposed and the date by which the civil penalty should be paid;

(8) a statement that recorded images are evidence of a violation of a red light signal;

(9) a warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and may result in a suspension of the driving privileges of the registered owner of the vehicle; and

(10) a statement that the person may elect to proceed by:

(A) paying the fine; or

(B) challenging the charge in court, by mail, or by administrative hearing.

(e) If a person charged with a traffic violation, as a result of an automated traffic law enforcement system, does not pay or successfully contest the civil penalty resulting from that violation, the Secretary of State shall suspend the driving privileges of the registered owner of the vehicle under Section 6-306.5 of this Code for failing to pay any fine or penalty due and owing as a result of 5 violations of the automated traffic law enforcement system.

(f) Based on inspection of recorded images produced by an automated traffic law enforcement system, a notice alleging that the violation occurred shall be evidence of the facts contained in the notice and admissible in any proceeding alleging a violation under this Section.

(g) Recorded images made by an automatic traffic law enforcement system are confidential and shall be made available only to the alleged violator and governmental and law enforcement agencies for purposes of adjudicating a violation of this Section, for statistical purposes, or for other governmental purposes. Any recorded image evidencing a violation of this Section, however, may be admissible in any proceeding resulting from the issuance of the citation.

(h) The court or hearing officer may consider in defense of a violation:

(1) that the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and not under the control of or in the possession of the owner at the time of the violation;

(2) that the driver of the vehicle passed through the intersection when the light was red either (i) in order to yield the right-of-way to an emergency vehicle or (ii) as part of a funeral procession; and

(3) any other evidence or issues provided by municipal or county ordinance.

(i) To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a report concerning the stolen motor vehicle or registration plates was filed with a law enforcement agency in a timely manner.

(j) Unless the driver of the motor vehicle received a Uniform Traffic Citation from a police officer at the time of the violation, the motor vehicle owner is subject to a civil penalty not exceeding $100, plus an additional penalty of not more than $100 for failure to pay the original penalty in a timely manner, if the motor vehicle is recorded by an automated traffic law enforcement system. A violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle.

(k) An intersection equipped with an automated traffic law enforcement system must be posted with a sign visible to approaching traffic indicating that the intersection is being monitored by an automated traffic law enforcement system.

(l) The compensation paid for an automated traffic law enforcement system must be based on the value of the equipment or the services provided and may not be based on the number of traffic citations issued or the revenue generated by the system.

(m) This Section applies only to the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties.

(625 ILCS 5/11-306) (from Ch. 95 1/2, par. 11-306)

Sec. 11-306. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights or color lighted arrows, successively one at a time or in combination, only the colors green, red and

yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication.

1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian-control signal, as provided in Section 11-307, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication.

1. Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

2. Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in Section 11-307, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady red indication.

1. Except as provided in paragraph 3 of this subsection (c), vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication to proceed is shown.

2. Except as provided in paragraph 3 of this subsection (c), vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication permitting the movement indicated by such red arrow is shown.

3. Except when a sign is in place prohibiting a turn and local authorities by ordinance or State authorities by rule or regulation prohibit any such turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by paragraph 1 or paragraph 2 of this subsection. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction or roadways. Such driver shall yield the right of way to pedestrians within the intersection or an adjacent crosswalk.

4. Unless otherwise directed by a pedestrian-control signal as provided in Section 11-307, pedestrians facing a steady circular red or red arrow signal alone shall not

enter the roadway.

~~5. A municipality with a population of 1,000,000 or more may enact an ordinance that provides for the use of an automated red light enforcement system to enforce violations of this subsection (c) that result in or involve a motor vehicle accident, leaving the scene of a motor vehicle accident, or reckless driving that results in bodily injury.~~

~~This paragraph 5 is subject to prosecutorial discretion that is consistent with applicable law.~~

(d) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable except as to provisions which by their nature can have no application. Any stop required shall be at a traffic sign or a marking on the pavement indicating where the stop shall be made or, in the absence of such sign or marking, the stop shall be made at the signal.

(e) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

(Source: P.A. 90-86, eff. 7-10-97; 91-357, eff. 7-29-99.)

(625 ILCS 5/11-612 new)

Sec. 11-612. Certain systems to record vehicle speeds prohibited. Except as authorized in the Automated Traffic Control Systems in Highway Construction or Maintenance Zones Act, no photographic, video, or other imaging system may be used in this State to record vehicle speeds for the purpose of enforcing any law or ordinance regarding a maximum or minimum speed limit unless a law enforcement officer is present at the scene and witnesses the event. No State or local governmental entity, including a home rule county or municipality, may use such a system in a way that is prohibited by this Section. The regulation of the use of such systems is an exclusive power and function of the State. This Section is a denial and limitation of home rule powers and functions under subsection (h) of

Section 6 of Article VII of the Illinois Constitution.

(625 ILCS 5/1-105.5 rep.)

Section 10. The Illinois Vehicle Code is amended by repealing Section 1-105.5.

Section 99. Effective date. This Act takes effect upon becoming law.

2013 IL App (1st) 112559-U

FOURTH DIVISION
January 24, 2013

No. 1-11-2559

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELIZABETH KEATING, PAUL KETZ, RANDALL D. GUINN, CAMERON W. MALCOLM, JR., CHARLIE PEACOCK, SHIRLEY PEACOCK and JENNIFER P. DiGREGORIO, individually and on behalf of all others similarly situated,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	10 CH 28652
v.	)	The Honorable Michael B. Hyman,
CITY OF CHICAGO, a Municipal Corporation,	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: The circuit court did not err in dismissing plaintiffs' complaint for failure to state

a claim because the City of Chicago's red light camera ordinance was valid and the Illinois enabling legislation was constitutional and not special local legislation. Dismissal as to the claims brought by plaintiffs Elizabeth Keating and Shirley Peacock based on lack of standing was proper because they were not issued citations from the City. As to the remaining plaintiffs, dismissal on the basis of the voluntary payment doctrine was error, as plaintiffs were under sufficient duress to pay the fines or be subject to further penalties, judgment, and attorney fees and costs. However, dismissal for failure to state a cause of action was appropriate. Chicago's red light camera ordinance was not void, as Chicago had jurisdiction to enact the provision pursuant to its home rule authority and was not in conflict with the Illinois Vehicle Code's proscription against the enactment of ordinances regulating moving violations. As Chicago had home rule authority to enact the ordinance and did not need an enabling act, the ordinance was not void either prior to or subsequent to the enabling act.

¶ 1 BACKGROUND

¶ 2 On July 9, 2003, the City of Chicago enacted an ordinance under the Chicago Municipal Code referred to as the red light camera program, which established liability and penalties for registered owners of vehicles used in violation of a red light signal. See Chicago Municipal Code. §§ 9-102-010 to 9-102-070 (added July 9, 2003). The new provisions established a red light violation and fine for the registered owner of a vehicle when the vehicle was used in a red light violation and a recorded image of the violation is recorded by an automated traffic law enforcement system. Chicago Municipal Code § 9-102-020 (added July 9, 2003). The red light camera program uses electronic monitoring devices to detect and record images of vehicles caught in an intersection in violation of a red light traffic signal. If the camera records a red light violation, the registered owner of the offending vehicle is mailed a written citation that includes copies of the photographs taken and describes how the owner may either contest the citation through an adjudication by mail or an in-person administrative hearing or pay the fine. Under the ordinance, regardless of who the driver was, it is the registered owner of the vehicle who is

liable. Chicago Municipal Code § 9-102-020 (added July 9, 2003).

¶ 3 An enabling act under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2006) was enacted effective May 22, 2006, which authorized red light camera programs in eight Illinois counties: Cook; DuPage; Kane; Lake; Madison; McHenry, St. Clair; and Will County. See 625 ILCS 5/11-208(f) (West 2006) (added by Pub. Act 94-795, eff. May 22, 2006); 625 ILCS 5/11-208.6(m) (West 2006).

¶ 4 Plaintiffs Paul Ketz, Randall Guinn, Cameron Malcolm, Jr., Charlie Peacock, and Jennifer DiGregorio are all registered vehicle owners who received red light violation citations from the City of Chicago. Plaintiff Shirley Peacock is Charlie Peacock's wife and was allegedly the driver of his vehicle for at least several of the six notices issued to Charlie Peacock and allegedly jointly paid the fines. The plaintiffs all paid the fines. Charlie Peacock first contested some of the notices of citation by mail. Jennifer DiGregorio contested the citation at an in-person hearing but was adjudicated liable. The amended complaint alleged that Plaintiff Elizabeth Keating "has received and unsuccessfully contested red light violation notices in other Illinois jurisdictions and reasonably expects and fears that she will receive one or more red light violation notices from the defendant City." Keating received a red light citation issued in Markham, Illinois and filed an administrative review action challenging her citation and that case was consolidated with the instant case and stayed pending resolution of this appeal. The remaining plaintiffs paid their fines. Plaintiffs then filed the instant action in circuit court.

¶ 5 Plaintiffs' amended complaint alleged that the City lacked home rule authority to enact the red light camera ordinance and for administrative adjudication of violations of the ordinance

and that the enabling act was unconstitutional because it was special or local legislation in violation of the Illinois Constitution. Plaintiffs sought a declaratory judgment that the ordinance was invalid, an injunction prohibiting the City from collecting fines under the program, and an order requiring the City to make restitution to plaintiffs and class members.

¶ 6 The City moved to dismiss the amended complaint in a combined motion pursuant to both section 2-615 and section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 5/2-619 (West 2010)), and after briefing and hearing the circuit court granted the City's motion. The court held that plaintiffs Elizabeth Keating and Shirley Peacock lacked standing because they did not receive citations from the City, and that the remaining plaintiffs did not have standing to assert that the City lacked home-rule power for the period of time from the enactment of the ordinance until the Illinois legislative enabling act because no plaintiff received a citation during that time. The court also rejected plaintiffs' claim that the enabling act violated the special or local law provision of the Illinois constitution because there was a rational basis for the legislature to enact the provision. The court further held that the voluntary payment doctrine barred plaintiffs' claims because they voluntarily paid the fines for the red light camera tickets. Plaintiffs appealed.

¶ 7 On appeal, plaintiffs argue that the circuit court erred in dismissing the action because: (1) the enabling act is unconstitutional local legislation; (2) the City's red light camera ordinance was void from its enactment and remained invalid after the passage of the Illinois red camera light program enabling legislation; (3) that the City's ordinance remained void after the enabling legislation specifically because the City never re-enacted its ordinance; and (4) alternatively, the

voluntary payment doctrine does not bar plaintiffs' action. The City argues that plaintiffs Keating and Shirley Peacock lack standing because they did not receive citations from the City, and that the remaining plaintiffs lack standing to challenge the ordinance's validity prior to the enactment of the Illinois enabling legislation. The City also argues that plaintiffs waived the argument that it had to re-enact the ordinance after the enabling act in order to be valid. We first address the threshold issue of standing, and then the remaining arguments advanced by plaintiffs on appeal.

¶ 8 ANALYSIS

¶ 9 I. Standing

¶ 10 We first address the City's argument that plaintiffs lack standing. Lack of standing is an affirmative defense in Illinois. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988). Standing may appropriately be raised by a motion for involuntary dismissal under section 2-619. *In re Custody of McCarthy*, 157 Ill. App. 3d 377, 380 (1987). Our review of a trial court's disposition of a section 2-619 motion is *de novo*. *Kedzie & 103rd Currency Exchange Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993).

¶ 11 The requirements for standing were stated by the Illinois Supreme Court held in *Greer*:

> "Standing in Illinois requires only some injury in fact to a legally cognizable interest. [Citation.] More precisely, the claimed injury, whether 'actual or threatened' [citation], must be: (1) 'distinct and palpable' [citation]; (2) 'fairly traceable' to the defendant's actions [citation]; and (3) substantially likely to be prevented or redressed by the grant of the requested relief [citations]." *Greer*, 122 Ill. 2d at 492-93.

¶ 12 A. Plaintiffs Elizabeth Keating and Shirley Peacock

¶ 13 "In the context of an action for declaratory relief, there must be an actual controversy between adverse parties, with the party requesting the declaration possessing some personal claim, status, or right which is capable of being affected by the grant of such relief. [Citation.]" *Greer*, 122 Ill. 2d at 492-93. The Illinois red light camera legislation specifically provided for ticketing the registered owner of a vehicle photographed by an automated red light camera, regardless of who was driving. See 625 ILCS 5/11–208.6(d) (West 2006).

¶ 14 Keating did not receive a red light camera citation from defendant City of Chicago. Her allegation in the amended complaint of speculative future harm in receiving a red light camera ticket from Chicago is insufficient to confer standing. As Keating did not receive any injury that is fairly traceable to the City's actions, there is no actual controversy sufficient to confer standing in this declaratory judgment action. Dismissal of Elizabeth Keating's claim based on lack of standing was appropriate and we affirm.

¶ 15 Shirley Peacock was not the registered owner of the vehicle cited and was not issued a citation, and therefore also did not receive any injury that is fairly traceable to the City's actions. While Shirley argues that there was indirect harm *vis a vis* the relationship with her husband, Charlie Peacock, who is the registered owner of the vehicle, because she split the cost of the fine with him, the fact remains that she herself was not cited under the ordinance. Shirley provides no authority for the proposition that the indirect harm she alleges can be the basis for a lawsuit based on the ordinance. We conclude she lacks standing to maintain this action on her own behalf. Therefore, dismissal of her claim due to lack of standing was also appropriate and we affirm.

¶ 16 B. The Remaining Plaintiffs Ketz, Guinn, Malcolm, Charlie Peacock, and DiGregorio

¶ 17 Paul Ketz, Randall Guinn, Cameron Malcom, Jr., Charlie Peacock, and Jennifer DiGregorio (remaining plaintiffs) all received red light camera citations from the City and thus have standing. Whether the remaining plaintiffs received their red light camera citations before or after the passage of the enabling act in 2006 does not impact their standing, because plaintiffs in their amended complaint did not only allege that the City's ordinance was invalid when enacted in 2003 prior to the 2006 enabling legislation; they also alleged that the ordinance remained invalid after the 2006 enabling act because the enabling act was unconstitutional.

¶ 18 The remaining plaintiffs argue that: (1) Chicago's red light ordinance was invalid from its inception in 2003 because the City lacked authority to enact the ordinance in the first place; (2) the City subsequently needed to re-enact the ordinance once authority was granted in the enabling act by the State; (3) the ordinance remained invalid after that passage of the legislature's enabling act; and (4) the circuit court erred in applying the voluntary payment doctrine to dismiss their lawsuit.

¶ 19 The City claims the remaining plaintiffs lack standing to argue that the ordinance was invalid when adopted in 2003 because the remaining plaintiffs all received citations after the passage of the enabling act in 2006. However, the remaining plaintiffs argue that the ordinance was not only invalid when adopted by the City in 2003 but that it remained invalid during the time they received citations, even after the passage of the enabling act in 2006, thus conferring standing.

¶ 20 The City also argues that the remaining plaintiffs waived the argument that the ordinance needed to be re-enacted after the passage of the Illinois enabling act because they did not raise

the specific argument that re-enactment of the ordinance was necessary after the enabling act. While plaintiffs did argue generally that the City did not have home rule authority to enact the ordinance prior to the enabling act, they also maintained below that the enabling act was unconstitutional, and thus did not raise any argument that the City should have re-enacted its ordinance after the enabling act. Thus, plaintiffs did waive this argument below. Where a party does not raise an argument in the trial court, the argument is forfeited on appeal. See *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 413 (2002) (citing *Wagner v. City of Chicago*, 166 Ill. 2d 144, 147 (1995)). See also *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 539 (1996) (holding that defendants waived their preemption argument by failing to raise it in the trial court).

¶ 21 Therefore, we address the remaining arguments: (1) that the City's ordinance was and remained invalid from its adoption in 2003 because the City lacked home rule authority; (2) that the legislature's enabling act was unconstitutional special local legislation that lacked rational basis; and (3) that the circuit court erred in applying the voluntary payment doctrine as an additional basis to dismiss their suit.

¶ 22 II. Chicago's Ordinance is Valid

¶ 23 Our review of a combined motion to dismiss pursuant to both section 2-615 and section 2-619 of the Illinois Code of Civil Procedure is *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Additionally, the trial court's ruling that an ordinance was an appropriate exercise of home rule authority presents a question of law, which we review *de novo*. *People v. Whitney*, 188 Ill.2d 91, 98 (1999).

¶ 24 The ordinance at issue in this case is as follows:

"9-102-020 Automated traffic law enforcement system violation.

(a) The registered owner of record of a vehicle is liable for a violation of this section and the fine set forth in Section 9-100-020 when the vehicle is used in violation of Section 9-8-020(c) or Section 9-16-030(c) and a recorded image of the violation is recorded by an automated traffic law enforcement system." Chicago Municipal Code § 9-102-020 (added July 9, 2003).

¶ 25 Section 9-8-020 governs traffic signal controls and provides that traffic facing a steady red signal must stop at a clearly marked stop line or, if none, then before entering the intersection and must remain standing until an indication to proceed is shown. Chicago Municipal Code § 9-8-020(c) (added July 12, 1990). Section 9-16-030 governs turns on red signals. Chicago Municipal Code § 9-16-030 (added July 12, 1990).

¶ 26 Under the Illinois Constitution, a municipality with a population exceeding 25,000 is deemed a "home rule unit" and is granted authority to enact laws relating to the rights and duties of its citizens:

"[A] home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Ill. Const.1970, art. VII, § 6(a).

¶ 27 This constitutional provision pertaining to powers of home rule units was intended to give home rule units the broadest powers possible to regulate matters of local concern. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 873 (2010) (citing *Scadron v. City*

of Des Plaines, 153 Ill. 2d 164, 174 (1992)). As the Illinois Supreme Court has recently explained, under the 1870 Illinois Constitution, the balance of power between our state and local governments was heavily weighted toward the state, but the 1970 Illinois Constitution drastically altered that balance, giving local governments more autonomy. *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18 (citing *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 286-87 (2001), *City of Evanston v. Create, Inc.*, 85 Ill. 2d 101, 107 (1981) (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3024)). Municipalities now enjoy "the broadest powers possible" under the Constitution. *Stubhub*, 2011 IL 111127 at ¶ 18 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174, 606 N.E.2d 1154, 180 Ill. Dec. 77 (1992)). In contrast, under "Dillon's Rule," "non-home-rule units possess only those powers specifically conveyed by the constitution or by statute; thus, such a unit may regulate in a field occupied by state legislation only when the constitution or a statute specifically conveys such authority." *Tri-Power Resources, Inc. v. City of Carlyle*, 2012 IL App (5th) 110075, ¶ 10 (quoting *Janis v. Graham*, 408 Ill. App. 3d 898, 902 (2011)).

¶ 28 The City of Chicago is a home rule unit. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 873 (2010). As such, our analysis is determined by the much broader scope of authority granted to the City of Chicago as a home rule authority.

¶ 29 "Under article VII, section 6, of the Illinois Constitution, home rule units of local government may enact regulations when the state has not specifically declared its exercise to be exclusive." *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 694 (2004) (citing Ill. Const. 1970 art. VII, § 6, *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (1994).

"In order to limit home rule power, a statute must contain express language as to the state's exclusive control; 'it is not enough that the State comprehensively regulates an area which otherwise would fall into home rule power.' " *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 517 (2000) (quoting *Village of Bolingbrook v. Citizens Utility Co.*, 158 Ill. 2d 133, 138 (1994)).

¶ 30 Concerning traffic ordinances specifically, "[p]rior to the adoption of the 1970 Illinois Constitution, units of municipal government were empowered to regulate motor vehicles in only those ways permitted by a specific act of the General Assembly." *Ruyle v. Reynolds*, 43 Ill. App. 3d 905, 907 (1976) (citing *Watson v. Chicago Transit Authority*, 12 Ill. App. 3d 684 (1973)). "Under the new constitution, however, home rule units are allowed to make any and all regulations not specifically prohibited by the General Assembly." *Ruyle*, 43 Ill. App. 3d at 907-08 (citing Ill. Const. 1970, art. VII, § 6, *Johnny Bruce Co. v. City of Champaign*, 24 Ill. App. 3d 900 (1974)).

¶ 31 The Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2004)) prohibits home rule units only from enacting provisions inconsistent with the Code, subject to the enumerated statutory sections. Section 11-208.2 of the Illinois Vehicle Code provides:

> "11-208.2. Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act." 625 ILCS 5/11-208.2 (West 2004).

¶ 32 The legislature has not preempted the field of traffic regulation; rather, "all municipalities

are limited to enacting traffic ordinances that are consistent with the provisions of chapter 11 of the Code and that do not upset the uniform enforcement of those provisions throughout the state." *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 525 (1999). Only section 11-208.2 limits the power of home rule authorities in this instance, and it limits home rule units to the extent any ordinance is inconsistent with Illinois traffic laws and regulations. This section, limiting the powers of home rule units, does not render void a city ordinance which is not inconsistent with the state's traffic laws or regulations. *Ruyle v. Reynolds*, 43 Ill. App. 3d 905, 908 (1976). "[S]ection 11--208.2 does not limit the powers of home rule units with respect to sections of the Vehicle Code outside chapter 11." *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 522 (2000) (holding that home rule towns did not exceed their powers by enacting ordinances allowing police to stop drivers solely for seat belt violations even though 625 ILCS 5/12-603.1 prohibits law enforcement officers from making such stops, because home rule towns were not expressly forbidden under the Illinois Vehicle Code from passing the ordinances, they were a valid exercise of the home rule power granted by Ill. Const., Art. VII, § 6(a)).

¶ 33 Section 11-207 of chapter 11 further provides in pertinent part:

> "The provisions of this Chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter ***." (Emphasis added.) 625 ILCS 5/11-207 (West 1998).

¶ 34 The Illinois Municipal Code provides that home rule authorities may not enact provisions that are traffic regulations governing the movement of vehicles. Section 1-2.1-2 of the Illinois Municipal Code authorizes systems of administrative adjudication of local code violations within the home rule authority of municipalities "except for offense[s] under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles." 65 ILCS 5/1-2.1-2 (West 2006). See, e.g., *Catom Trucking, Inc. v. City of Chicago*, 2011 IL App (1st) 101146, ¶ 18 (finding that section 1-2.1-2 stripped the city's department of administrative hearings of jurisdiction to adjudicate citations for operating overweight trucks on Chicago streets, as the citations were for moving violations).

¶ 35 Of the statutory sections excepted from the bar against home rule units enacting traffic regulations in section 11-208.2, only section 11-208 pertains to the regulation of traffic on streets, which provides the following:

> "Sec. 11-208. Powers of local authorities. (a) The provisions of this Code shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:
>
> * * *
>
> 2. Regulating traffic by means of police officers or traffic control signals." 625 ILCS 5/11-208 (West 2004).

¶ 36 Section 9-8-010 and section 9-8-020 of the Chicago Municipal Code specifically authorize the regulation of traffic-control devices which is allowed under the Illinois Vehicle Code. See Chicago Municipal Code §§ 9-8-010; 9-8-020 (added July 12, 1990)).

¶ 37 Prior to the 2006 enabling provision in section 11-208.6 for the red light camera automated system, there was no state legislation regarding the use of red light cameras, much less a specific prohibition against home rule authorities enacting such ordinances. Only with the enactment of the red light camera legislation was a limit placed on home rule authorities in connection with automated traffic law enforcement systems. Section 11-208(c) provided:

> "(c) Except as provided under Section 11-208.8 of this Code [625 ILCS 5/11-208.8], a county or municipality, including a home rule county or municipality, may not use an automated traffic law enforcement system to provide recorded images of a motor vehicle *for the purpose of recording its speed.* Except as provided under Section 11-208.8 of this Code, the regulation of the use of automated traffic law enforcement systems to record vehicle speeds is an exclusive power and function of the State. This subsection (c) is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. (1970) Art. VII, § 6]." (Emphasis added.) 625 ILCS 5/11-208.6(c) (West 2004).

¶ 38 In enacting the red light camera program the General Assembly made it clear that this new statutory scheme would not be subject to the prohibition in section 1-2.1.2 of the Municipal Code against the administrative adjudication of moving violations. *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, § 7. As this court recognized in *Fischetti*, the enactment itself specifies that: "A violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle." *Id.* (quoting Pub. Act 94-795 § 5

(eff. May 22, 2006); 625 ILCS 5/11-208.6(j) (West 2006)).

¶ 39 The remaining plaintiffs argue that the red light camera ordinance is in fact a regulation governing moving violations. However, the enabling legislation for automated traffic law enforcement systems such as the one used by Chicago explained the nature of the devices:

> "(a) As used in this Section, 'automated traffic law enforcement system' means a device with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a red signal indication in violation of Section 11-306 of this Code [625 ILCS 5/11-306] or a similar provision of a local ordinance." 625 ILCS 5/11-208.6 (West 2006).

¶ 40 Although the red light cameras are triggered by the movement of vehicles through a red light, the camera is capturing a moment in time depicting the vehicle's use in disobeying a red light signal.

¶ 41 Thus, the City had home rule authority to enact traffic regulations that are not inconsistent with the Illinois Vehicle Code and do not regulate the movement of vehicles. The City had specific authority to adopt red light ordinances. Further, the red light camera ordinances enacted by home rule authorities have been interpreted as not in conflict with the Illinois Vehicle Code's proscription against home rule authorities enacting moving violations. Therefore, as such, we are bound to conclude that Chicago was within its home rule authority in enacting the red light camera ordinance in 2003, the ordinance was not void *ab initio* and did not need the enabling legislation in 2006, and the ordinance also remained valid through the dates when the remaining plaintiffs received their citations, as the 2006 enabling legislation made clear that such

ordinances were not in conflict with the Illinois Vehicle Code.

¶ 42 Plaintiff's citation to *Village of Park Forest v. Thomason*, 145 Ill. App. 3d 327 (1986), is distinguishable because the ordinance involved there was for a drunk driving violation, which was a regulation governing the movement of a vehicle subject to the uniformity provision under Chapter 11 of the Illinois Vehicle Code. *Village of Park Forest*, 145 Ill. App. 3d at 331. *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515 (1999), is also distinguishable because the municipal ordinances there expressly sought to regulate moving violations. *Village of Hanover Park*, 311 Ill. App. 3d at 527-28. The regulation in *Catom Trucking* penalized a failure to stop, again a moving violation.

¶ 43 Plaintiffs' further citation in reply to *Two Hundred Nine Lake Shore Drive Building Corp. v. Chicago*, 3 Ill. App. 3d 46 (1971), is also distinguishable, as that case involved a municipal ordinance enacted before the grant of home rule authority in the Illinois Constitution of 1970, under the prior 1870 Constitution whereby a city had only the authorities specifically granted by the legislature. *Two Hundred Nine Lake Shore Drive Building Corp.*, 3 Ill. App. 3d at 50-51. Here, Chicago's ordinance was enacted well after the adoption of the 1970 Illinois Constitution at a time when the City unquestionably had home rule authority.

¶ 44 Plaintiffs also cite to *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18 (October 6, 2011), for the proposition that a home rule unit's attempt to exercise or perform a function not within the grant of the 1970 Constitution is void. *Stubhub* has since been modified upon denial of rehearing. See *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127 (November 26, 2012) (modified upon denial of rehearing). In its modified opinion, the supreme court held that the

City of Chicago's ordinance could not supplant the State's legislation regarding the collection of amusement taxes even under the city's constitutional home-rule authority, as "[t]he state has a greater interest than the City and a more traditional role in addressing the problem of tax collection by internet auctioneers." *Stubhub, Inc.*, 2011 IL 111127 at ¶ 36. The Illinois Supreme Court held that the rule in determining the extent of home rule power "limits [the court's] function under section 6(a) [Ill. Const. 1970, art. VII, § 6(a)] to a threshold one, in which we can declare a subject off-limits to local government control only where the state has a vital interest and a traditionally exclusive role." *Stubhub*, 2011 IL 111127 at ¶ 25. The Illinois Supreme Court further held that "[t]his test was used by a unanimous court as the definitive analysis under section 6(a) in *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 176 *** (1992), *Village of Bollingbrook v. Citizens Utilities Co. of Illinois*, 158 Ill. 2d 133, 139 *** (1994), and *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 290 *** (2001)," and as such was now "settled law." *Stubhub*, 2011 IL 111127 at ¶ 25. We note the dissent's view upon reconsideration pursuant to the City's petition for rehearing that the City was correct that the majority opinion has "radically redefined, and diminished, home-rule authority in Illinois." *Stubhub*, 2011 IL 111127 at ¶ 47 (Thomas, J., dissenting).

¶ 45 Unlike *Stubhub*, here section 11-207 of the Illinois Vehicle Code has long been consistently construed to allow local authorities to adopt traffic ordinances to the extent that they are not inconsistent with state law and do not attempt to regulate the movement of vehicles.

¶ 46 Thus, we conclude the circuit court correctly dismissed plaintiffs' amended complaint, as the red light camera ordinance was validly enacted pursuant to the City's home rule authority.

¶ 47 III. Constitutionality of the Enabling Illinois Legislation on Automated Traffic Law Enforcement Systems

¶ 48 Plaintiffs additionally argue that the City's red light camera ordinance remained invalid after the Illinois' enabling act because the State enabling legislation allowing red light camera programs in the counties specified is prohibited special local legislation and is arbitrary and does not pass the rational basis test. We determine this argument is not well-grounded, as the legislative history of the provision reveals that the reason for the enactment is not arbitrary and has a rational basis.

¶ 49 The bar against special local legislation in the Illinois Constitution of 1970 provides:

> "The 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.

¶ 50 "This constitutional provision does not prohibit all classifications; rather, its purpose is to prevent arbitrary legislative classifications." *In re Village of Vernon Hills*, 168 Ill. 2d 117, 122 (1995) (citing *Cutinello v. Whitley*, 161 Ill. 2d 409, 417 (1994); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 125 (1993)). "If any set of facts can be reasonably conceived that justify distinguishing the class to which the statute applies from the class to which the statute is inapplicable, then the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation or control, and may enact laws applicable only to those persons or objects." *In re Village of Vernon Hills*, 168 Ill. 2d at 122 (citing *Bilyk v. Chicago Transit Authority*, 125 Ill. 2d 230, 236 (1988); *People ex rel. County of Du Page v. Smith*, 21 Ill. 2d 572, 578 (1961)). "An act

is not an unconstitutional special or local law merely because of a legislative classification based upon population or territorial differences." *In re Village of Vernon Hills*, 168 Ill. 2d at 122 (citing *Smith*, 21 Ill. 2d at 578).

¶ 51 As the Illinois Supreme Court has explained, "[c]lassifications drawn by the General Assembly are always presumed to be constitutionally valid, and all doubts will be resolved in favor of upholding them." *In re Village of Vernon Hills*, 168 Ill. 2d at 122-23 (Citing *Bilyk*, 125 Ill. 2d at 235.) "The party who attacks the validity of a classification bears the burden of establishing its arbitrariness." *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *People v. Palkes*, 52 Ill. 2d 472, 477 (1972)).

¶ 52 Further, a claim that an enactment is special legislation is " ' "generally judged by the same standard" ' " that applies to review of an equal protection challenge. *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (quoting *Nevitt*, 157 Ill. 2d at 125, quoting *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 368 (1985)). Where an enactment does not affect a fundamental right or involve a suspect or quasi-suspect classification, the appropriate standard for review is the rational basis test. *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *Cutinello*, 161 Ill. 2d at 417; *Nevitt*, 157 Ill. 2d at 125). "Under this standard, a court must determine whether the statutory classification is rationally related to a legitimate State interest." *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *Cutinello*, 161 Ill. 2d at 417; *Nevitt*, 157 Ill. 2d at 125-26; *Bilyk*, 125 Ill. 2d at 236; *Christen v. County of Winnebago*, 34 Ill. 2d 617, 619 (1966)).

¶ 53 The Illinois Supreme Court has further defined the rational basis test, holding that a

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classification based upon population or territorial differences will survive a special legislation challenge only: "(1) where founded upon a rational difference of situation or condition existing in the persons or objects upon which the classification rests, and (2) where there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished." *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *In re Belmont Fire Protection District*, 111 Ill. 2d 373, 380 (1986); *Chicago National League Ball Club, Inc.*, 108 Ill. 2d at 369; Bridgewater v. Hotz, 51 Ill. 2d 103, 112 (1972); *Smith*, 21 Ill. 2d at 578; Du Bois v. Gibbons, 2 Ill. 2d 392, 399 (1954)). This test has become known as the "'two-prong test.' " *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *In re Belmont Fire Protection District*, 111 Ill. 2d at 380).

¶ 54 An examination of the enactment of the red light camera program reveals that it passes the rational basis test and the two-prong test, in that the inclusion of the specific counties is not arbitrary but, rather, is rationally related to a legitimate State interest and is founded upon both a rational difference of situation or condition and there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished.

¶ 55 The red light camera enabling legislation at issue was enacted in section 11-208 of the Illinois Vehicle Code on May 22, 2006, and provides as follows:

> "(f) A municipality or county designated in Section 11-208.6 [625 ILCS 5/11-208.6] may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of this Code or a similar provision of a local ordinance and imposing liability on a registered owner or lessee of a vehicle used in such a violation." 625 ILCS 5/11-208(f) (West 2006) (added by Pub. Act 94-795, eff. May 22, 2006).

¶ 56 Section 11-208.6(m) further provides: "This Section applies only to the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties." 625 ILCS 5/11-208.6(m) (West 2006).

¶ 57 In construing a statute, the primary objective is to give effect to the intention of the legislature, and we must "first examine the words of the statute as the language of the statute is the best indication of legislative intent." *People v. Collins*, 214 Ill. 2d 206, 214 (2005). "Where the language is plain and unambiguous we must apply the statute without resort to further aids of statutory construction." (Citations omitted). *Collins*, 214 Ill. 2d at 214. "Where statutory language is ambiguous, however, we may consider other extrinsic aids for construction, such as legislative history and transcripts of legislative debates, to resolve the ambiguity." *Id.* (citing *People v. Whitney*, 188 Ill.2d 91, 97–98 (1999)).

¶ 58 The relevant provisions of the enactment above do not indicate the reason for the inclusion of only those specific counties. Thus, we look to the transcript in the legislature of the discussion of the enactment as a constructive aid . The relevant discussion of why the legislation included particular counties is precisely on point and demonstrates the reason for the legislature's classification. Upon the third reading of the bill in the Senate, the following discussion occurred:

> "SENATOR RIGHTER:
>
> Thank you. Senator Cullerton, first, why these select counties? I think you've added seven, for a total of what would be eight now in the State. Why – why did you pick these particular counties?
>
> PRESIDENT JONES:

Senator Cullerton.

SENATOR CULLERTON:

Well, the way this works is it – *it would only be used and utilized in areas where they have a lot of traffic* because the cameras themselves cost something like ninety to a hundred thousand dollars. So, at the request of some Members in the – from both parties in the Transportation Committee, they indicated they didn't want to have this option in their counties, *so we limited it to the more populous counties* – populated counties." (Emphasis added.) 94th Ill. Gen. Assem., Senate Proceedings, March 29, 2006, at 22.

¶ 59 The discussion of the intent in including only the counties named in the enactment clarifies that the legislature intended only the more populous counties that have a lot of traffic would utilize the red light camera program. The classification is rationally based on differences in population and traffic in the State's counties. We determine the enactment is not an impermissible special local legislation prohibited by the Illinois Constitution, and therefore affirm the circuit court's dismissal of this constitutional claim.

¶ 60 IV. Voluntary Payment Doctrine

¶ 61 Plaintiffs also argue it was error to dismiss their suit based on the voluntary payment doctrine. Our supreme court reiterated the old common law voluntary payment doctrine in *Illinois Glass Co. v. Chicago Telephone Co.*, 234 Ill. 535 (1908):

"It has been a universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal. It has been

deemed necessary not only to show that the claim asserted was unlawful, but also that the payment was not voluntary; that there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion." *Illinois Glass Co.*, 234 Ill. at 541.

¶ 62 This court has previously noted that apparently the voluntary payment doctrine has been applied to any cause of action which seeks to recover a payment made under a claim of right, whether that claim is premised on contract, fraudulent misrepresentation, a statutory tax or penalty, among others. See *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 855, fn. 8 (1995) (recognizing the wide variety of causes of action applying the doctrine and cases cited therein). Under the voluntary payment doctrine, "money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal." *Smith v. Prime Cable*, 276 Ill. App. 3d 843, 847 (1995). A payment is involuntary if (1) the payor lacked knowledge of the facts upon which to protest the payment at the time of payment, or (2) the payor paid under duress. *Getto v. City of Chicago*, 86 Ill. 2d 39, 48-49 (1981). The voluntary payment doctrine does not apply when payment is "made under duress or compulsion." *Getto*, 86 Ill. 2d at 51. "The issue of duress and compulsory payment generally is one of fact *** to be judged in light of all the circumstances surrounding a given transaction," but "where the facts are not in dispute and only one valid inference concerning the existence of duress can be drawn from the facts, the issue can be decided as a matter of law including on a motion to dismiss." (Citations omitted.) *Smith*, 276 Ill. App. 3d at 850.

¶ 63 In the seminal case of *Illinois Glass Co.*, the plaintiff telephone customer brought an action against the telephone company to recover amounts paid for telephone service in excess of legal rates. However, our supreme court recognized even then that "[t]he ancient doctrine of duress of person, and later of goods, has been much relaxed, and extended so as to admit of compulsion of business and circumstances ***." *Illinois Glass Co.*, 234 Ill. at 541. Thus, the court observed that "perhaps a telephone corporation having a system in general operation and connected with customers and other business houses might reasonably influence a business house to make an unwilling payment of an amount illegally demanded, which would make the payment compulsory. The telephone has become an instrument of such necessity in business houses that a denial of its advantages would amount to a destruction of the business." *Illinois Glass Co.*, 234 Ill. at 541. The court nevertheless affirmed dismissal of the lawsuit. The Illinois Supreme Court held that although the telephone company illegally charged a higher rate, "a larger sum was voluntarily paid without fraud, mistake of fact or other ground for annulling the contract," and affirmed the appellate court's decision affirming dismissal of the telephone customer's suit. *Illinois Glass Co.*, 234 Ill. at 546.

¶ 64 However, many years later in *Getto*, 86 Ill. 2d 39, the Illinois Supreme Court revisited the issue and came to the opposite conclusion. In *Getto*, the plaintiff consumer brought a class action against the telephone company and defendant City of Chicago to recover an illegal message tax imposed by the City and collected by the telephone company. The case was before the Illinois Supreme Court on a second interlocutory appeal by the defendant telephone company. The Illinois Supreme Court first recognized the payment under protest is the typical means of

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objecting to taxes, the absence of such protest would not automatically require application of the voluntary payment doctrine. *Getto*, 86 Ill. 2d at 49. The court held that "[i]t must also be shown that the taxpayer plaintiff had knowledge of the facts upon which to frame a protest and also that the payments were not made under duress or compulsion." *Getto*, 86 Ill. 2d at 49. The court first found that the plaintiffs did not have sufficient facts to form a protest because the phone bills did not delineate which municipal "City" tax was involved, what portion of the bill was being taxed, or the fact that the charge included a 3% charge for costs of accounting. *Getto*, 86 Ill. 2d at 50. The court also went on to find that even if the plaintiff had sufficient knowledge of the facts, "the implicit and real threat that phone service would be shut off for nonpayment of charges amounted to compulsion that would forbid application of the voluntary-payment doctrine." *Getto*, 86 Ill. 2d at 51. The court rejected the defendants' argument that the plaintiff had to exhaust the administrative remedy provided for in a general order of the Illinois Commerce Commission because the alleged unlawful tax was "sanctioned and approved by the Commission itself." *Getto*, 86 Ill. 2d at 53. Thus, the court held that it was not necessary to exhaust this administrative remedy as "[a]ny attempt by the plaintiff to follow the procedural requirements in [the general order of the Commission] would obviously have been pointless and he would have been exposed to possible termination of service. We judge that the plaintiff is not barred under the voluntary-payment doctrine." *Id.* We note that *Illinois Glass Co.*, where the voluntary payment doctrine was applied, involved a contract with a telephone company, while *Getto* involved utility rates and charges established by the Illinois Commerce Commission and the City of Chicago (*Getto*, 86 Ill. 2d at 50).

¶ 65 The doctrine has been applied through the years with inconsistent and sometimes harsh results. Some courts have carved out a further special category of duress where allegedly unlawful taxes or fees were recoverable for either services or personal items deemed necessities. See *Getto*, 86 Ill.2d at 51 (payment made under duress when paid to avoid loss of telephone service); *Ross v. City of Geneva*, 71 Ill.2d 27, 33-34 (1978) (payment made under duress where public utility threatened to terminate electricity); *Geary v. Dominick's Finer Foods*, 129 Ill. 2d 389, 398 (1989) (payment of a sales tax was made under duress where the products being purchased, tampons and sanitary napkins, were necessities). However, this line of case law has resulted in some harsh results for consumers who felt compelled to pay disputed charges but courts did not find that they were under sufficient duress because the service was not a necessity. See *Dreyfus v. Ameritech Mobile Communications*, 298 Ill. App. 3d 933, 940 (1998) (cellular telephone service not a necessity); *Smith*, 276 Ill. App. 3d at 855.

¶ 66 We note that showing that a product or service is a necessity is not a requirement to establish duress under the voluntary payment doctrine; it is only one way to show duress. This court has recognized that the nature of sufficient duress has broadened and that recovery of a voluntary payment made under a claim of right can occur " 'where a person, to prevent injury to himself, his business or property, is compelled to make payment of money which the party demanding has no right to receive and no adequate opportunity is afforded the payor to effectively resist such demand.' " *Smith*, 276 Ill. App. 3d at 849 (quoting *Schlossberg v. E.L. Trendel & Associates, Inc.*, 63 Ill. App. 3d 939, 942 (1978)).

¶ 67 The modern trend has been against a harsh application of the ancient common law

voluntary payment doctrine. In *Raintree Homes, Inc. v. Vill. of Long Grove*, 389 Ill. App. 3d 836 (2009), the trial court found in favor of a plaintiff developer in the developer's declaratory judgment action wherein a village ordinance requiring the payment of impact fees as a condition of obtaining building permits was found unenforceable. The *Raintree* appellate court concluded that the trial court did not err in finding that the developer was not barred from recovering by the voluntary payment doctrine because the developer paid the fees under duress. The court was persuaded by the developer's testimony if he had been unable to obtain the building permits, his company would have gone out of business and breached its contracts with its customers. *Raintree Homes, Inc.*, 389 Ill. App. 3d at 864. Raintree could not have obtained any building permits without paying the associated impact fees. The court held that duress was established because "[w]ithout building permits, [Raintree] could not have legally built homes in the Village." *Raintree Homes, Inc.*, 389 Ill. App. 3d at 865. Further, the court held that the fact that Raintree apparently profited did not change the court's conclusion and missed the point that it paid the fees under duress. *Id.*

¶ 68 In a case involving facts more similar to the present case before us, *Norton v. City of Chicago*, 293 Ill. App. 3d 620 (1997), the plaintiffs challenged a $3 delinquent penalty fee on parking fines and brought suit against the City of Chicago, a collection agency, and Cook County. We reversed the summary judgment granted in favor of the county and held that the action was not barred by the voluntary payment doctrine because the demand notices from the City were coercive enough to render the plaintiffs' payment involuntary. The demand notices sent to plaintiffs threatened "further legal action," a "default judgment in the amount of $35 plus

court costs," to "take action to recover payment in a larger amount," or to "demand the maximum fine allowed by law." *Norton*, 293 Ill. App. 3d at 627. Further, the mailing directed the plaintiffs not to contact the traffic court and that, "No information will be given or payment accepted at Traffic Court." *Id.*

¶ 69 Similarly here, although the notices of citation from the City stated that one could either pay or contest the fine, here the City's ordinances had similar coercive language and effect as the notices in *Norton*. The Chicago Municipal Code provisions provided that unless a stay was obtained in court, even if administrative remedies were exhausted, if payment was not made within 21 days a determination of liability would be entered, collection actions could be taken, and plaintiffs would then be liable for attorney fees and costs, and could also have their vehicles immobilized. In relevant part, section 9-100-120 of the City's red light camera ordinance provided the following:

> "(a) If any fine or penalty is owing and unpaid after a determination of liability under this chapter has become final and the respondent *has exhausted or failed to exhaust* judicial procedures for review, the Department of Revenue shall cause a notice of final determination of liability to be sent to the respondent in accordance with Section 9-100-050(f).
>
> (b) Any fine and penalty, if applicable, remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the city which may be enforced in the manner set forth in Section 2-14-103 of this Code. Failure of the respondent to pay such fine or penalty within 21 days of the date of the notice *may result*

in the immobilization of the person's vehicle pursuant to the procedures described in Section 9-100-120." (Emphasis added.) Chicago Municipal Code § 9-102-060 (added July 9, 2003).

¶ 70 Section 2-14-103 provides for the following enforcement:

(a) Any fine, other sanction or costs imposed by an administrative law officer's order that remain unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures shall be a debt due and owing the city and, as such, *may be collected in accordance with applicable law.*

(b) *After the expiration of the period in which judicial review may be sought, unless stayed by a court of competent jurisdiction,* the findings, decision and order of an administrative law officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(c) In any case in which a respondent fails to comply with an administrative law officer's order to correct a code violation or imposing a fine or other sanction as a result of a code violation, *any expenses incurred by the city to enforce the administrative law officer's order, including but not limited to, attorney's fees, court costs and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or an administrative law officer shall be a debt due and owing the city.* Prior to any expenses being fixed by an administrative law officer, the respondent shall be provided with notice that states that the respondent shall appear at a hearing before an administrative law officer to determine whether the respondent has failed to comply with

the administrative law officer's order. The notice shall set the time for the hearing, which shall not be less than seven days from the date that notice is served. Notice shall be served by first class mail and the seven-day period shall begin to run on the date that the notice was deposited in the mail.

(d) Upon being recorded in the manner required by Article XII of the Code of Civil Procedure or by the Uniform Commercial Code, *a lien shall be imposed on the real estate or personal estate, or both*, of the respondent in the amount of a debt due and owing the city. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction." (Emphasis added) Chicago Municipal Code, § 2-14-103 (added April 29, 1998).

¶ 71 Thus, unless plaintiffs were to obtain a stay in a court of competent jurisdiction prior to the expiration of the period for judicial review, the fine becomes a judgment owed to the City, even if plaintiffs pursued the exhaustion of administrative remedies, the City could impose a lien on plaintiffs' property and pursue all avenues for collection, and plaintiffs would be liable for attorney fees and costs. Meanwhile, the City provided cited registered vehicle owners only 21 days to pay.

¶ 72 Further, section 9-100-120 in relevant part provides:

"(b) When the registered owner of a vehicle has accumulated three or more final determinations of parking violation or compliance liability, including a final determination of liability for a violation of Section 9-102-020, in any combination, for which the fines and penalties, if applicable, have not been paid in full, the city traffic

compliance administrator shall cause a notice of impending vehicle immobilization to be sent, in accordance with Section 9-100-050(f). *** Failure to pay the fines and penalties owed within 21 days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in person to submit evidence which would conclusively disprove liability within 21 days of the date of the notice. Documentary evidence which would conclusively disprove liability shall be based on the following grounds:

(1) that all fines and penalties for the violations cited in the notice have been paid in full; or

(2) that the registered owner has not accumulated three or more final determinations of parking or compliance violations liability which were unpaid at the time the notice of impending vehicle immobilization was issued; or

(3) in the case of a violation of Section 9-102-020, that the registered owner has not been issued a final determination of liability under Section 9-102-060. Chicago Municipal Code, § 9-100-120 (amended July 9, 2003).

Chicago Municipal Code § 9-102-120(b) (amended July 9, 2003).

¶ 73 The City argues that there was no duress because "plaintiffs could have challenged their red light camera tickets without incurring adverse consequences until after the proceedings were resolved." However, the above provisions establish that even if plaintiffs had exhausted their

administrative remedy, unless they obtained a stay in court, a notice of final determination would still issue, with the resulting judgment, potential liability for the City's costs and attorney fees, and possible immobilization of their vehicles. Chicago Municipal Code § 9-102-060 (added July 9, 2003).

¶ 74 Finally, the only administrative review provided for was to challenge liability, not to challenge the legality of the ordinance itself, which is what plaintiffs have done in this case. Chicago Municipal Code § 9-102-120(b) (amended July 9, 2003).

¶ 75 A review of precedent reveals that payments to the City of Chicago have been found to be voluntary where there is no immediate threat to the payor's property or threat of imposition of penalties. See, e.g., *Elston v. City of Chicago*, 40 Ill. 514 (1866) (payment of void assessment voluntary where only threat of levy and no immediate ability to take possession of payor's goods); *Arms v. City of Chicago*, 251 Ill. App. 532 (1929) (payment was voluntary where there was no evidence of threats by the City to impose penalties for failure to obtain electrical licenses). Here, there was both a threat to the plaintiffs' property (in the form of a judgment lien) and a threat of penalties.

¶ 76 The City relies on a case from 1968, *Berg v. City of Chicago*, 97 Ill. App. 2d 410 (1968), for the proposition that payment was voluntary and plaintiffs were not under duress because they had the option to pay the fine or to appeal and did not appeal. *Berg* held that because no appeals were taken from the judgments for the traffic fines in municipal court, "the fines were paid under a mistake of law and not under duress." *Berg*, 97 Ill. App. 2d at 425. The validity of *Berg* is questionable, as it is well established that "a party who challenges the validity of a statute on its

face is not required to exhaust administrative remedies." *Illinois Health Maintenance Organization Guaranty Ass'n v. Shapo*, 357 Ill. App. 3d 122, 137 (2005). " 'The reason for this exception is apparent: administrative review is confined to the proofs offered and the record created before the agency' " and "[a] facial attack to the constitutionality of a statute, which presents purely legal questions, is not dependent for its assertion or its resolution on the administrative record." *Shapo*, 357 Ill. App. 3d at 137 (quoting *Arvia v. Madigan*, 209 Ill.2d 520, 532-33 (2004)). Administrative exhaustion is also not required where the enabling legislation is challenged. See *Sedlock v. Board of Trustees of Police Pension Fund of City of Ottawa*, 367 Ill. App. 3d 526, 528 (2006) ("Where an administrative assertion of authority to hear or determine certain matters is challenged on its face as not authorized by the enabling legislation, such a facial attack does not implicate the exhaustion doctrine and exhaustion is not required."). Plaintiffs are correct that no Illinois Court has since relied on *Berg*, other than the circuit court below for the proposition cited by the City.

¶ 77 The City concedes that plaintiffs may bring a declaratory judgment action to challenge the validity of a law without exhausting administrative remedies, but then argues that the voluntary payment doctrine provides a valid defense, an argument which we reject in this case.

¶ 78 To hold that payment of fines for citations under the City red light ordinance was "voluntary" is to ignore the practical reality of duress to pay such citations issued by the City under the City's ordinances. If the threat of having phone service shut off established duress in *Getto*, and the threat of lost business for a real estate developer was sufficient to establish duress in *Raintree*, one would be hard–pressed to claim that a judgment, exposure to fees and costs, and

potential immobilization of one's vehicle does not establish duress. As plaintiffs correctly contend, dismissal on the basis of the voluntary payment doctrine was improper. However, because we have concluded that dismissal was proper for failure to state a cause of action because the ordinance is valid and the enabling act is constitutional, we affirm the judgment dismissing the complaint.

¶ 79 CONCLUSION

¶ 80 We determine the circuit court did not err in dismissing plaintiffs' complaint. Dismissal as to the claims brought by plaintiffs Elizabeth Keating and Shirley Peacock based on lack standing was proper because they were not issued citations from the City.

¶ 81 As to the remaining plaintiffs, Paul Ketz, Randall Guinn, Cameron Malcom, Jr., Charlie Peacock, and Jennifer DiGregorio, while dismissal on the basis of the voluntary payment doctrine was error, we determine dismissal was appropriate because the remaining plaintiffs have failed to state a cause of action. Chicago's red light camera ordinance was not void, as Chicago had home rule authority and the ordinance was not in conflict with the Illinois Vehicle Code's proscription against the enactment of ordinances regulating moving violations. Further, as Chicago had home rule authority to enact the ordinance and did not need an enabling act, the ordinance was not void either prior to or subsequent to the enabling act.

¶ 82 Affirmed.

JOINT COMMITTEE.

COMMITTEE ON TRAFFIC CONTROL AND SAFETY

AND

COMMITTEE ON TRANSPORTATION AND PUBLIC WAY.

AMENDMENT OF TITLE 9 OF MUNICIPAL CODE OF CHICAGO BY ADDITION OF NEW SECTION 102 ESTABLISHING AUTOMATED RED LIGHT CAMERA PROGRAM AND BY REVISION OF VARIOUS SECTIONS PERTAINING TO LIABILITY AND ENFORCEMENT THEREOF.

A Joint Committee, comprised of the members of the Committee on Traffic Control and Safety and the members of the Committee on Transportation and Public Way, submitted the following report:

CHICAGO, July 9, 2003.

To the President and Members of the City Council:

Your Committee on Traffic Control and Safety and Committee on Transportation and Public Way, to which was referred (June 4, 2003) a proposed ordinance amending the Municipal Code of the City of Chicago by adding a new Section 9-102, Establishment of Automated Red Light Camera Program, and further amending Sections 9-4-010, 9-100-050 and 9-100-120 of the Municipal Code, begs leave to recommend that Your Honorable Body do *Pass* the ordinance submitted herewith.

EXHIBIT 4

A084

This recommendation was concurred in by all members of the Committees present, with two dissenting votes.

Respectfully submitted,

(Signed) BURTON F. NATARUS,
Committee on Traffic Control and Safety,
Chairman.

(Signed) THOMAS R. ALLEN,
Committee on Transportation and Public Way,
Chairman.

Alderman Natarus and Alderman Brookins moved to *Defer* and publish the said proposed ordinance. The motion *Prevailed.*

Subsequent to further debate, Alderman Natarus and Alderman Brookins moved to *Withdraw* their motion to defer and publish the said proposed ordinance. The motion *Prevailed.*

Thereupon, on motion of Alderman Natarus, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays, as follows:

Yeas -- Aldermen Flores, Haithcock, Tillman, Preckwinkle, Hairston, Lyle, Beavers, Stroger, Beale, Pope, Balcer, Cárdenas, Olivo, Burke, T. Thomas, Coleman, L. Thomas, Rugai, Troutman, Muñoz, Zalewski, Chandler, Solis, Burnett, E. Smith, Carothers, Reboyras, Suarez, Matlak, Mell, Austin, Colón, Banks, Mitts, Allen, Laurino, O'Connor, Daley, Tunney, Levar, Shiller, Schulter, M. Smith, Moore -- 44.

Nays -- Aldermen Brookins, Doherty, Natarus, Stone -- 4.

Alderman Beavers moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

C00434

WHEREAS, The City of Chicago is a home rule unit of government as defined in Article VII, Section 6(a) of the Illinois Constitution and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, The promotion of public safety within its borders is a matter pertaining to the government and affairs of the City of Chicago; and

WHEREAS, The United States Department of Transportation's Federal Highway Administration estimates that drivers who run red lights are responsible for two hundred sixty thousand (260,000) crashes each year, of which approximately seven hundred fifty (750) are fatal; and

WHEREAS, In the year 2000 alone, one hundred six thousand (106,000) crashes, eighty-nine thousand (89,000) injuries and approximately one thousand thirty-six (1,036) deaths nationwide were attributed to red light running; and

WHEREAS, According to the Federal Highway Administration, red light cameras have been shown to reduce red light violations and intersection crashes. For example, the District of Columbia experienced a fifty-nine percent (59%) reduction in red light violations during the first year of operation of its red light enforcement system; and

WHEREAS, An automated red light enforcement system will complement enforcement of existing laws by permitting the imposition of sanctions even when law enforcement officers do not observe a violation of law and thus cannot charge the driver of a vehicle with a violation of the Illinois Vehicle Code; and

WHEREAS, The adoption of an automated red light enforcement system will result in a significant reduction in the number of red light violations and/or accidents within the City of Chicago; and

WHEREAS, The leaders of the City of Chicago are charged with safeguarding the safety of the public, and therefore, in order to reduce the foregoing problems, it is appropriate to implement a program to utilize an automatic red light enforcement system at intersections within the City; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The Municipal Code of Chicago is hereby amended by inserting a new Chapter 9-102, as follows:

9-102-010 Purpose -- Establishment Of Automated Red Light Camera Program.

(a) The purpose of this chapter is to provide for the establishment of an automated red light violation enforcement system which shall be administered by the Department of Transportation and the Department of Revenue and enforced through a system of administrative adjudication within the Department of Administrative Hearings.

(b) The system shall utilize a traffic control signal monitoring device which records, through photographic means, the vehicle and the vehicle registration plate of a vehicle operated in violation of Section 9-8-020(c) and Section 9-16-030(c). The photographic record shall also display the time, date and location of the violation.

(c) A program shall be established which utilizes an automatic red light enforcement system at various vehicle traffic intersections identified by the Department of Transportation with the advice of the Police Department. The intersections chosen for the program shall be located throughout the city.

(d) The Department of Transportation, the Police Department and the Department of Revenue shall adopt rules and regulations as may be necessary for the proper enforcement and administration of this Chapter.

9-102-020 Red Light Violation.

(a) The registered owner of record of a vehicle is liable for a violation of this section and a fine of $90.00 when the vehicle is used in violation of Section 9-8-020(c) or Section 9-16-030(c) and that violation is recorded by a traffic control signal monitoring device. A photographic recording of a violation obtained by a traffic control signal monitoring device shall be prima facie evidence of a violation of this chapter. It shall be a defense to a violation of this section that:

(1) the operator of the vehicle was issued a uniform traffic citation for a violation of Section 9-8-020(c) or Section 9-16-030(c); or

(2) the violation occurred at any time during which the vehicle or its state registration plates were reported to a law enforcement agency as having been stolen and the vehicle or its plates had not been recovered by the owner at the time of the alleged violation; or

C00436

(3) the vehicle was leased to another, and, within 60 days after the citation was mailed to the owner, the owner submitted to the Department of Revenue the correct name and address of the lessee of the vehicle identified in the citation at the time of the violation, together with a copy of the lease agreement and any additional information as may be required by the department. Where the lessor complies with the provisions of this section, the lessee of the vehicle at the time of the violation shall be deemed to be the owner of the vehicle for purposes of this chapter. The Department of Revenue, within 30 days of being notified by the lessor of the name and address of the lessee, shall mail the lessee a citation which contains the information required under Section 9-102-030. For the purposes of this chapter, the term "leased vehicle" shall be defined as a vehicle in which a motor vehicle dealership or manufacturer has, pursuant to a written document, vested exclusive possession, use, control and responsibility of the vehicle to the lessee during the periods the vehicle is operated by or for the lessee.

(b) The provisions of this section do not apply to any authorized emergency vehicle or any vehicle lawfully participating in a funeral procession.

(c) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of Section 9-8-020(c) or Section 9-16-030(c).

9-102-030 Citation Notice.

For each violation of Section 9-8-020(c) or Section 9-16-030(c) recorded by a traffic control signal monitoring device, the Department of Revenue shall mail a citation, within 30 days after receiving information about the registered owner of the vehicle from the Secretary of State, to the registered owner of record of the vehicle used in the commission of the violation. The citation shall include the name and address of the registered owner of the vehicle; the vehicle make, if available and readily discernable, and registration number; the offense charged; the time, date and location of the alleged violation; the applicable fine and monetary penalty which shall be automatically assessed for late payment; information as to the availability of an administrative hearing in which the citation may be contested on its merits and the time and manner in which such hearing may be had; and that the basis of the citation is a photographic record obtained by a traffic control signal monitoring device.

9-192-040 Grounds For Adjudication By Mail Or Administrative Hearing.

A person charged with violating Section 9-8-020(c) or Section 9-16-030(c) recorded by a traffic control signal monitoring device may contest the charge through an adjudication by mail or at an administrative hearing limited to one or more of the following grounds with appropriate evidence to support:

(1) that the operator of the vehicle was issued a uniform traffic citation for a violation of Section 9-8-020(c) or Section 9-16-030(c); or

(2) that the violation occurred at any time during which the vehicle or its state registration plates were reported to a law enforcement agency as having been stolen and the vehicle or its plates had not been recovered by the owner at the time of the alleged violation; or

(3) that the vehicle was leased to another, and, within 60 days after the citation was mailed to the owner, the owner submitted to the Department of Revenue the correct name and address of the lessee of the vehicle identified in the citation at the time of the violation, together with a copy of the lease agreement and any additional information as may be required by the department; or

(4) that the vehicle was an authorized emergency vehicle or was a vehicle lawfully participating in a funeral procession; or

(5) that the facts alleged in the violation notice are inconsistent or do not support a finding that Section 9-8-020(c) was violated; or

(6) that the respondent was not the registered owner or lessee of the cited vehicle at the time of the violation.

9-102-050 Determination Of Liability.

The determination of liability for a citation issued under this chapter shall be made in accordance with Sections 9-100-050, and 9-100-070 through 9-100-090.

9-102-060 Notice Of Final Determination.

(a) If any fine or penalty is owing and unpaid after a determination of liability under this chapter has become final and the respondent has exhausted or failed to exhaust judicial procedures for review, the Department of Revenue shall cause a notice of final determination of liability to be sent to the respondent in accordance with Section 9-100-050(f).

(b) Any fine and penalty, if applicable, remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the city which may be enforced in the manner set forth in Section 2-14-103 of this Code. Failure of the respondent to pay such fine or penalty within 21 days of the date of the notice may result in the immobilization of the person's vehicle pursuant to the procedures described in Section 9-100-120.

(c) The city shall withdraw a violation notice, following reasonable collection efforts, when the notice was issued to a registered owner who is deceased at the time collection efforts are undertaken.

9-102-070 Supplementary Enforcement.

The liability created by Section 9-102-020 shall be imposed in addition to any liability otherwise provided for by any ordinance or statute governing the movement of traffic and the program authorized by Section 9-102-010 shall supplement enforcement of traffic regulations provided by Chapter 9-8 of the Municipal Code and the Illinois Motor Vehicle Code and shall not replace or substitute for enforcement of these or any other law.

SECTION 2. Section 9-4-010 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and inserting, in correct alphabetical order, the language underscored, as follows:

9-4-010 Definitions.

Whenever the following words and phrases are used in Chapters 9-4 through ~~9-100~~ 9-102, they shall have the meanings respectively ascribed to them in this section:

"Registered owner" means the person in whose name the vehicle is registered with the Secretary of State of Illinois or such other state's registry of motor vehicles.

SECTION 3. Section 9-100-050 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

9-100-050 Determination Of Liability.

(a) A person on whom a parking or compliance violation notice has been served pursuant to Section 9-100-030 or Section 9-102-030 shall within seven days from the date of the notice:

(1) pay the indicated fine; or, in the manner indicated on the notice, either (2) submit the materials set forth in Section 9-100-070 to obtain an adjudication by mail; or (3) request an administrative hearing as set forth in Section 9-100-080 to contest the charged violation. A response by mail shall be deemed timely if postmarked within seven days of the issuance of the notice of violation.

* * * * *

(Subsections (b) through (f) of Section 9-100-050 are not affected by this amendment and are not shown here for editorial convenience.)

* * * * *

SECTION 4. Section 9-100-120 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and inserting the language underscored, as follows:

9-100-120 Immobilization Program.

(a) The city traffic compliance administrator is hereby authorized to direct and supervise a program of vehicle immobilization for the purpose of enforcing the parking and compliance ordinances of the traffic code. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle located on the public way or any city-owned property by placement of a restraint in such a manner as to prevent its operation or if the eligible vehicle is parked or left in violation of any provision of the traffic code for which such vehicle is subject to an immediate tow pursuant to Section 9-92-030, or in any place where it constitutes an obstruction or hazard, or where it impedes city workers during such operations as snow removal, the city traffic compliance administrator may cause the eligible vehicle to be towed to a city vehicle pound or relocated to a legal parking place and there restrained.

(b) When the registered owner of a vehicle has accumulated three or more final determinations of parking violation or compliance liability, <u>including a final determination of liability for a violation of Section 9-102-020,</u> in any combination, for which the fines and penalties, if applicable, have not been paid in full, the city traffic compliance administrator shall cause a notice of impending vehicle immobilization to be sent, in accordance with Section 9-100-050(f). The notice of

impending vehicle immobilization shall state the name and address of the registered owner, the state registration number of the vehicle or vehicles registered to such owner, and the serial numbers of parking and/or compliance violation notices which have resulted in final determination of liability for which the fines or penalties remain unpaid. Failure to pay the fines and penalties owed within 21 days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in person to submit evidence which would conclusively disprove liability within 21 days of the date of the notice. Documentary evidence which would conclusively disprove liability shall be based on the following grounds:

(1) that all fines and penalties for the violations cited in the notice have been paid in full; ~~or~~

(2) that the registered owner has not accumulated three or more final determinations of parking or compliance violation liability which were unpaid at the time the notice of impending vehicle immobilization was issued; or

(3) in the case of a violation of Section 9-102-020, that the registered owner has not been issued a final determination of liability under Section 9-102-060.

* * * * *

(Subsections (c) through (h) of Section 9-100-120 are not affected by this amendment and are not shown here for editorial convenience.)

* * * * *

SECTION 5. This ordinance shall be in full force and take effect thirty (30) days after its passage and publication.

C9053

TITLE 9 VEHICLES, TRAFFIC AND RAIL TRANSPORTATION / CHAPTER 9-8 TRAFFIC CONTROL DEVICES AND SIGNALS / 9-8-020 Traffic-control signal legend.

9-8-020 Traffic-control signal legend.

Whenever traffic is controlled by traffic-control devices exhibiting steady colored lights, successively one at a time, in combination or with arrows, the following colors only shall be used and the signals shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) *Green Indication.*

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left except as such movement is modified by lane-control signs, turn prohibition signs, lane markings, or roadway design. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal indication is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian-control signal as provided in Section 9-8-050, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

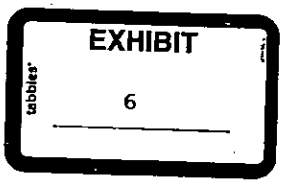
(b) *Steady Yellow Indication.*

(1) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in Section 9-8-050, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

(c) *Steady Red Indication.*

(1) Except as provided in Section 9-16-030, vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and



shall remain standing until an indication to proceed is shown.

(2) Except as provided in Section 9-16-030, vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication permitting the movement indicated by such red arrow is shown.

(Added Coun. J. 7-12-90, p. 18634)

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TITLE 9 VEHICLES, TRAFFIC AND RAIL TRANSPORTATION / CHAPTER 9-16 TURNING MOVEMENTS / 9-16-030 Turns on red signals.

9-16-030 Turns on red signals.

(a) Except as provided in subsection (c), the driver of a vehicle may turn right when facing a steady red signal; provided, however, he may do so only from the lane closest to the right-hand curb or edge of roadway, must come to a full stop and must yield the right-of-way to pedestrians and to other traffic lawfully using the intersection.

(b) Except as provided in subsection (c), the driver of a vehicle on a one-way roadway, facing a steady red signal, may turn left into an intersecting one-way roadway in which traffic travels to the left; provided, however, he may do so only from the lane closest to the left-hand curb or edge of roadway, must come to a full stop and must yield the right-of-way to pedestrians and to other traffic lawfully using the intersection.

(c) Drivers may not turn left or right on a steady red signal when official traffic-control devices have been erected indicating that such turns are prohibited.

(Added Coun. J. 7-12-90, p. 18634)

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West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Constitution of the State of Illinois (Refs & Annos)
Article VII. Local Government (Refs & Annos)
➡➡ § 6. Powers of Home Rule Units

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(b) A home rule unit by referendum may elect not to be a home rule unit.

(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each

house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

Current through 9/1/13

END OF DOCUMENT

WEST'S

ILLINOIS VEHICLE CODE

CHAPTER 625 ILLINOIS COMPILED STATUTES

2006 Edition

[Supersedes 2005 Pamphlet]

THOMSON
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practicable to the nearest line of the crosswalk on the near e of the intersection or, if there is no crosswalk, then as se as practicable to the nearest line of the intersecting idway.

(c) The Department may in its discretion and when traffic nditions warrant such action give preference to traffic upon y of the State highways under its jurisdiction over traffic ossing or entering such highway by erecting appropriate ffic control devices.

A. 76-1586, § 11-302, eff. July 1, 1970. Amended by P.A. -217, § 4, eff. Jan. 1, 1992; P.A. 93-177, § 10, eff. July 11, 03.

ormerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-302.

11-303. The Department to place signs on all State highways

§ 11-303. The Department to place signs on all State ghways.

(a) The Department shall place and maintain such traffic-ntrol devices, conforming to its manual and specifications all highways under its jurisdiction as it shall deem neces-ry to indicate and to carry out the provisions of this apter or to regulate, warn or guide traffic.

(b) No local authority shall place or maintain any traffic-ntrol device upon any highway under the jurisdiction of the epartment except by the latter's permission.

(c) The Department shall erect and maintain guide, warn-g and direction signs upon highways in cities, towns and llages of which portions or lanes of such highways are der the control and jurisdiction of the Department or for hich the Department has maintenance responsibility.

(d) Nothing in this Chapter shall divest the corporate thorities of park districts of power to prohibit or restrict e use of highways under their jurisdiction by certain types weights of motor vehicles or the power of cities, villages, corporated towns and park districts to designate highways r one-way traffic or the power of such municipal corpora-ons to erect and maintain appropriate signs respecting such ses.

(e) Nothing in this Section shall prohibit a municipality, wnship, or county from erecting signs as required under ie Illinois Adopt-A-Highway Act.[1]

.A. 76-1586, § 11-303, eff. July 1, 1970. Amended by P.A.)-1495, § 36, eff. Jan. 8, 1979; P.A. 87-1118, § 90, eff. Sept. 3, 1992.

ormerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-303.

1 605 ILCS 120/1 et seq.

/11-304. Local traffic-control devices; tourist oriented businesses signs

§ 11-304. Local traffic-control devices; tourist oriented usinesses signs.

Local authorities in their respective maintenance jurisdic-on shall place and maintain such traffic-control devices upon ighways under their maintenance jurisdiction as are re-uired to indicate and carry out the provisions of this Chap-er, and local traffic ordinances or to regulate, warn, or guide raffic. All such traffic control devices shall conform to the tate Manual and Specifications and shall be justified by raffic warrants stated in the Manual. Placement of traffic-ontrol devices on township or road district roads also shall e subject to the written approval of the county engineer or uperintendent of highways.

Local authorities in their respective maintenance jurisdictions shall have the authority to install signs, in conformance with the State Manual and specifications, alerting motorists of the tourist oriented businesses available on roads under local jurisdiction in rural areas as may be required to guide motorists to the businesses. The local authorities and road district highway commissioners shall also have the authority to sell or lease space on these signs to the owners or operators of the businesses.

P.A. 76-1586, § 11-304, eff. July 1, 1970. Amended by P.A. 87-217, § 4, eff. Jan. 1, 1992; P.A. 90-519, § 5, eff. June 1, 1998; P.A. 93-177, § 10, eff. July 11, 2003.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-304.

5/11-305. Obedience to and required traffic-control devices

§ 11-305. Obedience to and required traffic-control devices. (a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed or held in accordance with the provisions of this Act, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Act.

(b) It is unlawful for any person to leave the roadway and travel across private property to avoid an official traffic control device.

(c) No provision of this Act for which official traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place.

(d) Whenever any official traffic-control device is placed or held in position approximately conforming to the requirements of this Act and purports to conform to the lawful requirements pertaining to such device, such device shall be presumed to have been so placed or held by the official act or direction of lawful authority, and comply with the requirements of this Act, unless the contrary shall be established by competent evidence.

(e) The driver of a vehicle approaching a traffic control signal on which no signal light facing such vehicle is illuminated shall stop before entering the intersection in accordance with rules applicable in making a stop at a stop sign.

P.A. 76-1586, § 11-305, eff. July 1, 1970. Amended by P.A. 76-2160, § 1, eff. July 1, 1970; P.A. 79-1069, § 1, eff. Jan. 1, 1976; P.A. 80-267, § 1, eff. Oct. 1, 1977; P.A. 84-873, § 1, eff. Jan. 1, 1986.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-305.

5/11-306. Traffic-control signal legend

§ 11-306. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights or color lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication.

1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicular traffic, including vehicles turning right or left, shall yield the right

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of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian-control signal, as provided in Section 11-307, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication.

1. Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

2. Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in Section 11-307, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady red indication.

1. Except as provided in paragraph 3 of this subsection (c), vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication to proceed is shown.

2. Except as provided in paragraph 3 of this subsection (c), vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication permitting the movement indicated by such red arrow is shown.

3. Except when a sign is in place prohibiting a turn and local authorities by ordinance or State authorities by rule or regulation prohibit any such turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by paragraph 1 or paragraph 2 of this subsection. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction or roadways. Such driver shall yield the right of way to pedestrians within the intersection or an adjacent crosswalk.

4. Unless otherwise directed by a pedestrian-control signal as provided in Section 11-307, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway.

5. A municipality with a population of 1,000,000 or more may enact an ordinance that provides for the use of an automated red light enforcement system to enforce violations of this subsection (c) that result in or involve a motor vehicle accident, leaving the scene of a motor vehicle accident, or reckless driving that results in bodily injury.

This paragraph 5 is subject to prosecutorial discretion that is consistent with applicable law.

(d) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable except as to provisions which by their nature can have no application. Any stop required shall be at a traffic sign or a marking on the pavement indicating where the stop shall be made or, in the absence of such sign or marking, the stop shall be made at the signal.

(e) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

P.A. 76-1586, § 11-306, eff. July 1, 1970. Amended by P.A. 76-1737, § 1; P.A. 78-24, § 1, eff. Jan. 1, 1974; P.A. 79-1069, § 1, eff. Jan. 1, 1976; P.A. 81-861, § 1, eff. Jan. 1, 1980; P.A. 81-1509, Art. II, § 71, eff. Sept. 26, 1980; P.A. 84-873, § 1, eff. Jan. 1, 1986; P.A. 90-86, § 5, eff. July 10, 1997; P.A. 91-357, § 231, eff. July 29, 1999.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-306.

5/11-307. Pedestrian-control signals

§ 11-307. Pedestrian-control signals. Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" or the illuminated symbols of a walking person or an upraised palm are in place such signals shall indicate as follows:

(a) Walk or walking person symbol. Pedestrians facing such signal may proceed across the roadway in the direction of the signal, and shall be given the right of way by the drivers of all vehicles.

(b) Don't Walk or upraised palm symbol. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partly completed his crossing on the Walk signal or walking person symbol shall proceed to a sidewalk or safety island while the "Don't Walk" signal or upraised palm symbol is illuminated, steady, or flashing.

P.A. 76-1586, § 11-307, eff. July 1, 1970. Amended by P.A. 79-1069, § 1, eff. Jan. 1, 1976; P.A. 81-553, § 1, eff. Jan. 1, 1980.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-307.

5/11-308. Lane-control signals

§ 11-308. Lane-control signals. Whenever lane-control signals are used in conjunction with official signs, they shall have the following meanings:

(a) Downward-pointing green arrow. A driver facing this indication is permitted to drive in the lane over which the arrow signal is located. Otherwise he shall obey all other traffic controls present and follow normal safe driving practices.

(b) Red X symbol. A driver facing this indication shall not drive in the lane over which the signal is located, and this indication shall modify accordingly the meaning of all other traffic controls present. Otherwise he shall obey all other traffic controls and follow normal safe driving practices.

(c) Yellow X (steady). A driver facing this indication should prepare to vacate the lane over which the signal is

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Formerly cited as IL ST CH 95 1/2 ¶ 11-306

Effective: July 6, 2012

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Chapter 625. Vehicles
Act 5. Illinois Vehicle Code (Refs & Annos)
Chapter 11. Rules of the Road (Refs & Annos)
Article III. Traffic Signs, Signals and Markings (Refs & Annos)
➡➡ 5/11-306. Traffic-control signal legend

§ 11-306. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights or color lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication.

1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian-control signal, as provided in Section 11-307, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication.

1. Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

2. Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in Section 11-307, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady red indication.

1. Except as provided in paragraphs 3 and 3.5 of this subsection (c), vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication to proceed is shown.

2. Except as provided in paragraphs 3 and 3.5 of this subsection (c), vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication permitting the movement indicated by such red arrow is shown.

3. Except when a sign is in place prohibiting a turn and local authorities by ordinance or State authorities by rule or regulation prohibit any such turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by paragraph 1 or paragraph 2 of this subsection. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction or roadways. Such driver shall yield the right of way to pedestrians within the intersection or an adjacent cross-

walk.

3.5. In municipalities with less than 2,000,000 inhabitants, after stopping as required by paragraph 1 or 2 of this subsection, the driver of a motorcycle or bicycle, facing a steady red signal which fails to change to a green signal within a reasonable period of time not less than 120 seconds because of a signal malfunction or because the signal has failed to detect the arrival of the motorcycle or bicycle due to the vehicle's size or weight, shall have the right to proceed, after yielding the right of way to oncoming traffic facing a green signal, subject to the rules applicable after making a stop at a stop sign as required by Section 11-1204 of this Code.

4. Unless otherwise directed by a pedestrian-control signal as provided in Section 11-307, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway.

(d) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable except as to provisions which by their nature can have no application. Any stop required shall be at a traffic sign or a marking on the pavement indicating where the stop shall be made or, in the absence of such sign or marking, the stop shall be made at the signal.

(e) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

CREDIT(S)

P.A. 76-1586, § 11-306, eff. July 1, 1970. Amended by P.A. 76-1737, § 1; P.A. 78-24, § 1, eff. Jan. 1, 1974; P.A. 79-1069, § 1, eff. Jan. 1, 1976; P.A. 81-861, § 1, eff. Jan. 1, 1980; P.A. 81-1509, Art. II, § 71, eff. Sept. 26, 1980; P.A. 84-873, § 1, eff. Jan. 1, 1986; P.A. 90-86, § 5, eff. July 10, 1997; P.A. 91-357, § 231, eff. July 29, 1999; P.A. 94-795, § 5, eff. May 22, 2006; P.A. 97-627, § 5, eff. Jan. 1, 2012; P.A. 97-762, § 5, eff. July 6, 2012.

Formerly Ill.Rev.Stat.1991, ch. 95 1/2, ¶ 11-306.

Current through P.A. 98-486, with the exception of P.A. 98-455, P.A. 98-456, and P.A. 98-463, of the 2013 Reg. Sess.

END OF DOCUMENT

TABLE OF CONTENTS TO THE RECORD ON APPEAL

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VOLUME 4 OF 5

File for Case No. 10 CH 26189, *Keating v. City of Markham*
(consolidated for pretrial purposes with Case No. 10 CH 28652, *Keating v. City of Chicago*)

[1] The Record on Appeal contains several unpaginated pages. Plaintiffs-Appellants have designated these pages by adding "-A" to the immediately preceding page number.

End of Case Number 10 CH 26189, *Keating v. City of Markham*
Resume Case Number 10 CH 28652, *Keating v. City of Chicago*

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