No. 116054

IN THE
SUPREME COURT OF ILLINOIS

ELIZABETH KEATING, PAUL W. KETZ, RANDALL D. GUINN, CAMERON W. MALCOM, 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

BRIEF OF DEFENDANT-APPELLEE CITY OF CHICAGO

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Plaintiffs-appellants Elizabeth Keating, et al. ("plaintiffs"), brought suit against the City of Chicago challenging the tickets and fines they received under the chapter of the Chicago Municipal Code establishing an automated red light camera program. All plaintiffs received tickets after a 2006 state statute expressly authorized eight Illinois counties (including Cook) and their municipalities to enact red light camera ordinances and to adjudicate the resulting tickets through administrative proceedings ("the enabling act"). Although no plaintiff received a ticket before the 2006 enabling act, plaintiffs nevertheless challenged the City's home-rule authority to enact its red light camera ordinance in 2003. They additionally challenged the enabling act itself, claiming it violated the Illinois Constitution's prohibition of "special or local" legislation.

The circuit court granted the City's motion to dismiss. It held that all plaintiffs lacked standing to challenge the City's home-rule authority for the ordinance for the period between 2003 and 2006 because no plaintiff had received a red light camera ticket in that period.[1] The court additionally held that the enabling act did not violate the special or local provision of the Illinois Constitution because there was a rational basis for the General Assembly to select the eight named counties. The court further held that the voluntary payment doctrine barred plaintiffs' restitution claim because they had voluntarily paid the fines for their red light camera tickets.

The appellate court affirmed the circuit court's dismissal for failure to state a claim, holding that the City had the authority to issue plaintiffs' tickets under the 2006

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[1] Two plaintiffs, including Keating, also lacked standing because they had never received red light camera tickets from the City.

enabling act. The court rejected plaintiffs' constitutional challenge to the enabling act, holding that it passed rational-basis review. The court further held that plaintiffs had waived their argument that the City needed to perform the formality of reenacting its red light camera ordinance after the enabling act's passage because plaintiffs failed to present this challenge in the circuit court. The court additionally held that the City had home-rule authority to enact the ordinance in 2003. Finally, the court noted its disagreement with the circuit court's ruling on the voluntary payment doctrine.

Plaintiffs petitioned this court for review, challenging the appellate court's rulings that the City had home-rule authority for its ordinance and that the enabling act did not violate the Illinois Constitution. Plaintiffs' petition for leave to appeal did not challenge the appellate court's holding that they had waived the argument that the City needed to reenact its ordinance after the 2006 enabling act, nor ask the court to overlook that waiver. This court granted leave to appeal.

Plaintiffs now argue the two issues they presented in their petition for leave to appeal and a third – their waived argument that the City needed to perform the formality of reenacting the red light camera ordinance after the enabling act, which they did not present in their petition.

This court should affirm the circuit and appellate court judgments. The enabling act does not violate the Illinois Constitution, and if this court agrees, it need not reach plaintiffs' challenge to the City's pre-2006 home-rule authority, which plaintiffs lack standing to assert in any event. Alternatively, the City did have and continues to have such home-rule authority. As for remedy, plaintiffs' restitution claim is barred by the voluntary payment doctrine. This court should not address the claim that the City needed

to reenact its ordinance after the enabling act because, in addition to waiving the claim by failing to present it in the circuit court (as the appellate court correctly held), plaintiffs forfeited it by failing to include the question in their petition for leave to appeal. All questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the enabling act violates the special or local provision of the Illinois Constitution where there is a rational basis for the General Assembly to conclude that the eight selected locations suffer more from red light violations due to their populations, proximity to Chicago and St. Louis, and other local conditions.

2. Whether plaintiffs lack standing to challenge the City's home-rule authority between 2003 and 2006 to enact the red light camera ordinance because no plaintiff received a ticket during this period.

3. Whether, if plaintiffs have standing to challenge the City's exercise of home-rule authority, the City had in 2003 and continues to have home-rule authority to enact the red light camera ordinance, because red light violations on City roads are within the sphere of its governmental interests and the General Assembly has not preempted either the enactment of such ordinance or its enforcement through administrative proceedings.

4. Whether plaintiffs are barred by the voluntary payment doctrine from asserting a restitution claim because they voluntarily paid their fines.

5. Whether plaintiffs waived and forfeited their claim that the City needed to reenact its red light camera ordinance after the enabling act by not asserting this in the

circuit court and by failing to include this question in their petition for leave to appeal.

JURISDICTION

The circuit court entered judgment dismissing plaintiffs' complaint on August 2, 2011. C. 762-89.[2] Plaintiffs appealed. C. 887-88. On January 24, 2013, the appellate court affirmed the circuit court's judgment in a Rule 23 order. A50-A83. Plaintiffs filed a petition for rehearing on February 14, 2013, which the appellate court denied on April 8, 2013. Plaintiffs filed a petition for leave to appeal on May 13, 2013. This court allowed the petition on September 25, 2013, and has jurisdiction pursuant to Ill. Sup. Ct. R. 315.

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

In addition to the provisions set forth in appendix to the Brief of Plaintiffs-Appellants, the following is relevant to this appeal:

Ill. Const. art. IV, § 13:

> 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.

STATEMENT OF FACTS

In 2003, the City enacted an ordinance that imposes a fine on the owner of a

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[2] The record consists of five volumes. The first four contain the common-law record and are consecutively paginated. We cite these as "C. __." The fourth volume also contains the record from an administrative review action Keating brought against the City of Markham, Illinois, C. 791-886, which was consolidated with this case, but stayed pending further court order, C. 881. The fifth volume contains a report of proceedings, and we will cite it as "Tr. __." We will cite the appendix to the Brief of Plaintiffs-Appellants as "A__."

vehicle that is caught on camera violating a red light signal. A84-A92; Municipal Code of Chicago, Ill. §§ 9-102-010 to 9-102-070 (2011).[3] The vehicle owner incurs liability no matter who is driving the vehicle, Municipal Code of Chicago, Ill. § 9-102-020(a), unless the driver receives a traffic citation for the red light violation, Municipal Code of Chicago, Ill. §§ 9-102-020(a)(1), 9-102-40(1).[4] Under the ordinance, liability for red light camera violations "shall supplement enforcement of traffic regulations provided by . . . the Illinois Motor Vehicle Code and shall not replace or substitute for enforcement" of that Code. Municipal Code of Chicago, Ill. § 9-102-070.[5]

The enabling act became effective in 2006, expressly authorizing eight Illinois counties – Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will – and the municipalities located in those counties to adopt red light camera programs imposing liability on the registered owners of vehicles used in red light signal violations. A26-A49; 625 ILCS 5/11-208(f), 5/11-208.6(m) (2012). The enabling act also expressly permits administrative adjudication of red light camera violations, 625 ILCS 5/11-

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[3] In 2012, the City Council amended the Chicago Municipal Code to move the provisions of chapter 9-102 pertaining to the adjudication of red light camera violations in administrative proceedings into the chapter of the Code governing administrative adjudications, chapter 9-100. See Journal of Proceedings of the City Council of Chicago, Ill., Apr. 18, 2012, pp. 23764-74, 23777-81. There were no significant substantive changes as a result of these alterations. Because the former version of chapter 9-102 was in effect up to and including the time plaintiffs received their red light camera tickets, we will cite that version.

[4] This defense is now found in Municipal Code of Chicago, Ill. § 9-100-060(b)(2)(i) (2013).

[5] The ordinance now provides, in Municipal Code of Chicago, Ill. § 9-102-020(f) (2013), that red light camera violations are subject to a provision of the enabling act that permits civil penalties for red light camera violations "[u]nless the driver of the motor vehicle received a Uniform Traffic Citation," 625 ILCS 5/11-208.6(j) (2012).

208.3(a) (2012), and states that a red light camera violation "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. 5/11-208.6(j).

Plaintiffs are registered vehicle owners whose vehicles were caught by camera violating red light signals and who received red light camera citations from the City in 2006 or later. A15-A19 ¶¶ 74-113.[6] They filed suit challenging both the City's 2003 home-rule authority to enact the red light camera ordinance and the constitutionality of the 2006 enabling act. A3-A15 ¶¶ 8-73. The circuit court granted the City's motion to dismiss, holding that plaintiffs did not have standing to challenge the City's 2003 home-rule authority to enact the ordinance because no plaintiff received a ticket before the 2006 enabling act; that the enabling act is constitutional; and that plaintiffs' restitution claim was barred by the voluntary payment doctrine. C. 768-78, 785-88.[7]

The appellate court affirmed. A50-A83. The court held that all but two plaintiffs had standing. A56 ¶¶ 17-19. It rejected plaintiffs' claim that the City lacked home-rule authority for the ordinance in 2003, recognizing that the General Assembly had not preempted the City's home-rule authority to enact the ordinance or enforce it through

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[6] Plaintiffs concede that one plaintiff, Keating, lacks standing and state that they do not seek review of the judgment with respect to her. Brief of Plaintiffs-Appellants 11 n.6. They do include plaintiff Shirley Peacock in their statement of facts, id. at 11, despite the circuit court's holding that she lacked standing because she was not the registered vehicle owner, and thus was not liable for any red light camera violation, C. 766-68. The appellate court affirmed the circuit court's dismissal of Peacock's claim due to her lack of standing, A55 ¶ 15, and plaintiffs did not include a challenge to that ruling in the issues presented to this court in their petition for leave to appeal. Accordingly, they have forfeited any such challenge to the judgment with respect to Peacock, who should not be considered an appellant in this court.

[7] Plaintiffs concede they are not challenging the circuit court's rejection of their other challenges to the enabling act. Brief of Plaintiffs-Appellants 12 n.7.

administrative proceedings. A57-A66. The court further held that the enabling act did not violate the Illinois Constitution's prohibition of special or local legislation because there was a rational basis for the General Assembly to conclude that the selected counties and their municipalities suffer a disproportionate impact from red light violations due to their populations and traffic conditions. A67-A71. The court additionally held that plaintiffs had waived, by failing to present to the circuit court, the argument that the enabling act, even if constitutional, could not authorize the City's red light camera ordinance because the City did not formally reenact the ordinance after the enabling act. A56-A57 ¶ 20. Finally, in dicta, the court stated that the voluntary payment doctrine would not bar plaintiffs' restitution claim. A71-A83. The appellate court rejected plaintiffs' petition for rehearing, and this court granted leave to appeal.

ARGUMENT

The circuit and appellate courts correctly held that the City now has, and has always had, legal authority for its red light camera program. There is no dispute that state law – the enabling act – now gives the City such authority. This authorizes both the issuance of red light camera tickets and the adjudication of those tickets in administrative proceedings. All of plaintiffs' tickets post-dated this express state authorization.

This court should reject plaintiffs' constitutional challenge to the enabling act. This court's cases establish that the standard of scrutiny applied to challenges brought under the Illinois Constitution's special or local provision is the rational-basis test. Plainly, there is a rational basis for the General Assembly to select the eight counties and their municipalities – these locations' population, traffic conditions, and proximity to two

major urban centers set them apart from other locations in the state. Plaintiffs provide no basis to depart from this court's precedent. Indeed, they do not even propose a standard of scrutiny, nor explain why the court's prior cases were incorrect. Instead, they rely solely on the words of the constitutional provision, which does not itself explain what level of scrutiny courts should use to review the General Assembly's enactments. We submit that with no fundamental rights nor suspect class at issue, there is no basis for heightened scrutiny.

Because the enabling act is plainly constitutional, there is no reason for this court to examine whether the City had home-rule authority to adopt its red light camera ordinance prior to the enabling act. Plaintiffs, in fact, lack standing to argue that the City had no such authority between 2003 and 2006, because no plaintiff received a red light camera ticket then. Regardless, the City had and continues to have such home-rule authority, independent of the enabling act, because regulating the use of the City's roads is within the City's governmental affairs, and the General Assembly has not preempted such regulation to date. Nor has the General Assembly preempted the adjudication of red light camera tickets in administrative proceedings. Thus, plaintiffs' red light tickets were legally authorized and lawfully adjudicated, even without the enabling act.

Apart from the City's legal authority to issue red light camera tickets, the circuit court correctly dismissed plaintiffs' restitution claim, which is barred by the voluntary payment doctrine. Plaintiffs voluntarily paid their fines, although they did not have to do so in order to challenge the constitutionality of the red light camera program.

Finally, this court should not consider plaintiffs' argument that the City needed to perform the formality of reenacting its red light camera ordinance in 2006 after the

enabling act's passage. Not only was this never raised in their complaint or in the circuit court proceedings, but plaintiffs did not see fit to include the issue in their petition for leave to appeal. That constitutes forfeiture under this court's longstanding precedent. There is no reason for the court to overlook this forfeiture, including because the City's 2003 red light camera ordinance plainly was not "void" when enacted – it has never been declared unconstitutional by any court, nor is there doubt that a regulation of this sort is within the scope of the City's governmental interests as a home-rule unit. In any event, the City did "reenact" the ordinance each of the several times it amended the ordinance after 2006, by substituting newly worded sections and continuing the other sections in force. A requirement to first wipe the unamended sections from the books and then reenact the exact same wording would place form over substance and impinge upon the City's constitutional authority as a home-rule unit.

A motion to dismiss for failure to state a claim under section 2-615 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615 (2012), should be granted where the complaint's allegations fail to establish a cause of action on which relief may be granted. E.g., Green v. Rogers, 234 Ill. 2d 478, 491 (2009). A motion to dismiss under section 2-619(a), 735 ILCS 5/2-619(a) (2012), should be granted where the claim is barred by an affirmative matter, including lack of standing. E.g., Glisson v. City of Marion, 188 Ill. 2d 211, 220 (1999). The court must accept all well-pled allegations and view them in the light most favorable to the plaintiff. E.g., Green, 234 Ill. 2d at 491. This court's review of an order granting a motion to dismiss is de novo, e.g., id.; Glisson, 188 Ill. 2d at 220-21, as its review of the constitutionality of statutes, e.g., Unzicker v. Kraft Foods

Ingredients Corp., 203 Ill. 2d 64, 85-86 (2002). Under these standards, this court should affirm the judgment.

I. THE ENABLING ACT IS NOT UNCONSTITUTIONAL SPECIAL OR LOCAL LEGISLATION.

Statutes "enjoy a strong presumption of constitutionality, and the party challenging the statute bears the burden of clearly rebutting this presumption." Unzicker, 203 Ill. 2d at 85; accord, e.g., Allen v. Woodfield Chevrolet, Inc., 208 Ill. 2d 12, 21 (2003). Here, plaintiffs' challenge to the enabling act as local legislation fails.

Plaintiffs' submission fundamentally misunderstands judicial review. When an enactment is challenged as unconstitutional, the court first decides if the constitution imposes limitations on legislative power that are judicially enforceable; if so, the court decides what deference to afford the legislature's determination that a particular law is within the scope of its powers. For the special or local clause, the 1970 Constitution made clear what the 1870 Constitution did not – that whether a law is special or local is within the scope of judicial review. But that is just the first step. The court still must decide what deference to afford the legislature's determination. On that question, this court has consistently concluded that rational-basis review is appropriate. In this case, the enabling act easily satisfies rational-basis review. We explain these two points in turn.

A. A Standard Of Scrutiny Should Apply To Review Whether A Law Is Unconstitutional Special Or Local Legislation, And It Should Be Rational-Basis Review.

It is the judiciary's "power and . . . duty [to] interpret[ ] the laws and the constitution whenever they are judicially presented for consideration," and this includes whether "laws are such as the legislature was authorized by the constitution to pass."

People ex rel. Billings v. Bissell, 19 Ill. 229 (1857), 1857 WL 5695, at *2 (1857). And this court is "the final arbiter of the Constitution." People ex rel. Harrod v. Illinois Courts Commission, 69 Ill. 2d 445, 458 (1977). In practical terms, this means that "[i]n reviewing legislation, the role of the courts is now, as before, to ensure that the enactment does not exceed whatever *judicially enforceable* limitations the constitution places on the General Assembly's power." Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 27 (1996). To execute this duty, the judiciary has created standards of scrutiny to apply to review enactments, and these standards depend on the enactment and rights at issue.

The prohibition on special or local legislation 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.

Ill. Const. art. IV, § 13. This limitation on the General Assembly's legislative power "prevent[s] arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis." Best v. Taylor Machine Works, 179 Ill. 2d 367, 391 (1997). This prohibition originally appeared in the 1870 Illinois Constitution as a response to the General Assembly's abusive grant of special charters, which "enriched particular classes of individuals at the expense of others." Id. at 391-92. The version in the 1870 Constitution enumerated close to two dozen specific categories of legislation for which the General Assembly could not pass a local or special law. Id. The 1970 Constitution removed this "'laundry list,'" in favor of a general prohibition, largely because the specific categories had lost their relevance. Id. at 392-93.

In addition, under the 1870 Constitution, this court took the view that outside the specifically enumerated categories, "the power to determine whether a general law could

be made applicable" was "vested in the legislature." Best, 179 Ill. 2d at 393; accord, e.g., Bridgewater v. Hotz, 51 Ill. 2d 103, 110 (1972); Sommers v. Patton, 399 Ill. 540, 547 (1948). For such matters, the General Assembly itself was solely charged with enforcing the limitation on legislative power. In other words, there were no "judicially enforceable limitations," Committee for Educational Rights, 174 Ill. 2d at 27 (emphasis omitted), putting such matters beyond judicial oversight. Commentators on the 1870 Constitution have speculated that the judiciary reached this conclusion because of the structure of the provision itself, which enumerated specific types of prohibited special or local laws, but added that "in all other cases," special or local laws were not prohibited, unless such laws could not be made general. George D. Braden & Rubin G. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 222-23 (Univ. of Ill. Inst. of Govt. & Public Affairs 1969) [hereafter "Braden & Cohn"]. This structure could have led courts to conclude that because the 1870 Constitution "covered all the serious local and special legislation evils" (in the enumerated categories), they should not "'knock [themselves] out'" making the often-difficult determination whether a law could be made general in the other cases. Id. at 223. Whatever the reason, the 1970 Constitution removed the enumeration of prohibited cases and added that whether a law could be made generally applicable is "a matter for judicial determination." Ill. Const. art. IV, § 13; see also Best, 179 Ill. 2d at 393. Thus, special or local challenges are now on par with all other constitutional questions within the judiciary's power to decide.

Plaintiffs' challenge to the constitutionality of the enabling act fundamentally misunderstands these principles, starting from the erroneous premise that the judiciary's task in assessing whether the General Assembly has adhered to constitutional limits is

different for the special or local clause than for any other constitutional provision. Plaintiffs would stop at the language of the special or local provision, arguing that it "is just as straightforward as it seems" to apply the "test" whether the law could have been made general. Brief of Plaintiffs-Appellants 26 [hereafter "Pls. Br."]. But the authority to make a "judicial determination" does not itself prescribe how the judiciary should go about that. For example, courts decide equal protection challenges, too, but a law challenged for denying equal protection will still be subject to rational-basis review, unless fundamental rights or a suspect class require stricter scrutiny. Plainly, the judicial determination in equal protection cases does not end with the constitutional language prohibiting laws that "den[y] . . . equal protection." Ill. Const. art. I, § 2. Likewise, plaintiffs' local legislation challenge cannot end with the words of the special or local provision itself. Instead, as for challenges under any other constitutional provision, after deciding the provision is subject to judicially enforceable limitations, the court should decide the level of scrutiny, which in turn depends on the rights involved. In short, an integral part of the court's judicial determination is what deference to afford the General Assembly's legislative and policy choices.

Indeed, this court has already determined that despite the constitution's provision for "judicial determination," special or local challenges will be reviewed under the rational-basis test. From the earliest cases decided after the new constitution, when this court was fully aware that the matter was one for judicial determination, the court concluded that the test for this inquiry is rational-basis review. E.g., Best, 179 Ill. 2d at 393 (recognizing that 1970 Constitution "rejected the previous rule" that left it up to legislature whether laws could be made generally applicable, and deciding "the

appropriate standard for our review . . . is the rational basis test"); Bridgewater, 51 Ill. 2d at 110-12 (recognizing "that although the scope of judicial review of legislation is . . . enlarged [by the 1970 Constitution], section 13 requires no change in our definition of when a law is 'general and uniform,' 'special,' or 'local,'" and then proceeding to apply rational-basis test).[8] The rational-basis test is appropriate because special or local challenges do not address laws concerning fundamental rights or suspect classifications. E.g., Allen, 208 Ill. 2d at 22; Best, 179 Ill. 2d at 393; Cutinello v. Whitley, 161 Ill. 2d 409, 417 (1994). Importantly, the determination does not require the court to decide "[w]hether the course chosen is wise or whether it is the best means to achieve the desired result." Bridgewater, 51 Ill. 2d at 111. Instead, the question is whether "there is a reasonable basis for differentiating between the class to which the law is applicable and the class to which it is not." Id.

Indeed, we have found no case in which the court applied something besides the rational-basis test, even in cases where the court did not explicitly identify what test it was applying. The court always assessed whether the General Assembly could have believed there was a conceivable reason for the classification and struck it down where there was none, or it was arbitrary. For example in Grace v. Howlett, 51 Ill. 2d 478 (1972), decided mere months after Bridgewater, this court recognized that differential

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[8] Thus, there was no basis for Braden and Cohn's concern that the court would return to its former practice of finding non-justiciable special or local laws outside the enumerated cases. Braden and Cohn feared that, notwithstanding the provision for judicial determination, the courts would "gallop through . . . a hole, dragging the old pseudo-special legislation rules with them." Braden & Cohn 226. Plaintiffs seem to think this passage reflects a belief that no legislative deference is appropriate under the new constitution. Pls. Br. 40-41. But the passage expresses no view on how courts should perform their judicial determination, only the view that they should in fact perform one, in contrast to pre-1970 practice.

treatment of private and non-private vehicles could be appropriate for many reasons, but "there [was] no reason" for the differential treatment in the enactment at issue. Id. at 487-88 (emphasis added); see also id. at 488 (distinguishing cases in which "the legislature could rationally have found relevant differences in the circumstances"; differential treatment is inappropriate when made "on an arbitrary basis"); accord, e.g., People ex rel. East Side Levee & Sanitary District v. Madison County Levee & Sanitary District, 54 Ill. 2d 442, 447 (1973) (invalidating legislation because "[t]he briefs cite no reasons, and none are apparent to us," for the classification at issue). Most recently, in Board of Education v. Peoria Federation of Support Staff, 2013 IL 114853, this court held a law was unconstitutional special legislation because "there is no rational justification" for limiting the law's application to the favored class, and thus doing so was "irrational." Id. ¶¶ 59-60. In no case we have found did the court decide for itself whether special or local legislation could be made general without examining reasons, potential or actual, the General Assembly could have thought supported the classification.

Plaintiffs claim, without citation, that the drafters of the 1970 Constitution "intended for the courts to construe the prohibition on local legislation strictly." Pls. Br. 37. There is no basis for that interpretation. The provision says the court shall decide, but does not specify how the court should go about deciding, much less direct the court to approach this provision differently from all others. And, as we have explained, this court has consistently decided such issues according to whether the General Assembly's choice was rational, whether it upheld or invalidated the classification.

Plaintiffs also argue that "the intent of the drafters . . . was to ban" laws, Pls. Br. 37, applicable only to specified geographical areas, id. at 41-42.[9] But they misread the Braden and Cohn treatise, on which they rely. Id. at 40-42. They cite its example of an impermissible law that "'permit[s] the city of Onetown to have five dog-catchers, notwithstanding a general law that limited all cities to four dog-catchers.'" Id. at 41 (quoting Braden & Cohn 207). But Braden and Cohn go on to explain that "[i]t would make great sense to permit Onetown to have more dog-catchers than other cities in the state" if it "were the only city in the state which bordered on an uninhibited wilderness in which there were packs of wild dogs." Braden & Cohn 208. In other words, a law that applies only to one named locality is permissible if there is a rational explanation for it.[10] This is particularly true with respect to populous areas of the state: "there are innumerable matters of justifiable state concern . . . in which the impact of legislation on Chicago should be different from the impact on any other city in the state"; "Chicago is different because it is so large." Id. at 209. "[A] state problem does not affect all parts of the state in the same way, and the legislature is entitled to classify parts of the state in order to produce a reasonable solution to a state problem." Id. at 212; see also id. at 222 ("There are a great many occasions when a local or special act is the proper, perhaps the only, way to solve a legislative problem."). Braden and Cohn accordingly believed that

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[9] The legislative intent is of limited use. "It would be improper for this court to transform statements made during the constitutional convention into constitutional requirements where such statements are not reflected in the language of the constitution." Nevitt v. Langfelder, 157 Ill. 2d 116, 136 (1993) (internal quotations omitted).

[10] Plaintiffs seem to concede this elsewhere in their brief by admitting "[i]t 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." Pls. Br. 33.

laws pertaining exclusively to certain locations are permissible, assuming "the classification is reasonable in relation to the purpose of the legislation." Id. at 209. And that is precisely what this court has routinely assessed under the rational-basis test. In short, local laws that name certain geographical locations are not per se unconstitutional, even according to Braden and Cohn.[11]

Finally, Cutinello is no outlier that should be "clarified . . . or overruled." Pls. Br. 42. In Cutinello, the plaintiffs challenged a statute permitting three counties to impose a tax on individuals selling motor fuel at retail, claiming other counties should have been included. 161 Ill. 2d at 413, 420-21. This court concluded there was a rational basis to limit the statute to the selected counties. Id. at 417-22. Consistent with longstanding precedent, the court explained that "[l]egislation . . . is not rendered special simply because it operates in only one part of the State," id. at 419, and that there was no requirement for the legislature to "state its rational basis," id. at 420. Instead, only "a reasonable relationship between the challenged legislation and a conceivable, and perhaps unarticulated, governmental interest" is necessary. Id. The dissent, on which plaintiffs rely, Pls. Br. 43, disagreed with the majority whether there was "a rational or substantial difference of situation or condition" justifying the classification. 161 Ill. 2d at 429 (Freeman, J., dissenting). But even the dissent agreed that "no reason for a classification

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[11] Contrary to plaintiffs' belief, Pls. Br. 42, the constitution also does not prohibit drafting local legislation by naming the specific locations at issue. Drafting legislation to make clear the distinguishing characteristics of the selected class perhaps could help courts understand what reasons exist for the classification. See Braden & Cohn 211 (law's form can help courts determine rational basis); id. at 212 (legislature should draft statutes to make explicit rationality of classification). But as long as rational reasons in fact exist or can be conceived, the form of the law should not trump its substance, and the constitution does not say this is required.

need be stated," id. at 428, and the classification should be assessed for a rational basis, id. at 427-29. It did not advocate striking down the law simply for naming the counties to which it applied. Cutinello is thus consistent with all the rest of this court's cases, which uphold rational local laws applying to one part of the State. This court should continue to apply the rational-basis test and not depart from all its prior cases.

B. The Enabling Act Easily Passes The Rational-Basis Test.

A statute premised on population or territorial differences that is challenged as unconstitutional local legislation will survive challenge if "founded upon a rational difference of situation or condition existing in the persons or objects" that are the subjects of the law, and "there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished." In re Petition of Village of Vernon Hills, 168 Ill. 2d 117, 123 (1995); accord, e.g., Chicago National League Ball Club, Inc. v. Thompson, 108 Ill. 2d 357, 369 (1985). A statute is "not an unconstitutional special or local law merely because of a legislative classification based upon population or territorial differences." Vernon Hills, 168 Ill. 2d at 122.

This court's review is "deferential." Northern Illinois Home Builders Association, Inc. v. County of Du Page, 165 Ill. 2d 25, 38 (1995) (internal quotations omitted). The "court need only determine whether a rational basis exists . . . not the wisdom of the classification." Id. at 40. The legislature need not state its reasons justifying the classification, nor make legislative findings in support. Cutinello, 161 Ill. 2d at 420. Indeed, the law "may be based on rational speculation unsupported by evidence or empirical data." Id. at 421-22 (internal quotations omitted). And no

"courtroom factfinding" is proper. Id. at 421 (internal quotations omitted).[12] The law will be upheld "[i]f any set of facts can be reasonably conceived that justifies the class to which the statute applies from the class to which the statute is inapplicable." Vernon Hills, 168 Ill. 2d at 122.

Here, there is a rational basis for the enabling act. Both population and location set apart the eight selected geographical areas from all other areas of the state. The act applies to eight of the nine most populous counties in the state, C. 634, that surround the two largest cities in the region – Chicago and St. Louis, C. 480 (map). Chicago is in Cook County, and Lake, McHenry, Kane, DuPage, and Will Counties are the five "collar" counties immediately surrounding Cook. C. 480 (map). Similarly, Madison and St. Clair Counties are directly outside St. Louis. Id. Within the borders of these counties are numerous closely spaced municipalities, many with contiguous borders, and multiple highly traveled roads. See http://www.countymapsofillinois.com/ (follow links to Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will for maps of each county showing municipalities, population, and roads) (last visited on March 18, 2014).[13] It was quite rational for the General Assembly to conclude that the combination of large populations, closely spaced municipalities, and numerous well-traveled roads leading to two major urban centers results in high traffic volume in these locations, and this, in turn, disproportionately inflicts the evils of red light violations on these counties and their

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[12] For this reason, plaintiffs' complaint that the circuit court "denied [them] . . . an evidentiary hearing" and the chance "to create a fuller record," Pls. Br. 33, or "prove" certain facts, id. at 35, is misplaced.

[13] Courts may take judicial notice of maps available from mainstream internet sites whose accuracy cannot reasonably be questioned. E.g., People v. Clark, 406 Ill. App. 3d 622, 632-34 (2d Dist. 2010).

municipalities. Moreover, there is a direct connection between the goal of increasing traffic safety – by increasing detection and simplifying enforcement – and the enabling act's authorization of such ordinances in the locations where the problem is most acute.

Plaintiffs cannot meet their burden to rebut this rational basis. They fixate on their belief that "the classification is framed in terms of *counties*, but it actually operates . . . only to distinguish *municipalities*." Pls. Br. 34. This ignores that enabling act's plain language authorizes the named "counties . . . [and] municipalities located within those counties." 625 ILCS 5/11-208.6(m). The objects of the classification are, in reality, certain geographical locations in the state.[14] The General Assembly authorized all local governments in those locations, both counties and municipalities, to adopt red light cameras. The factor that distinguishes both the counties and municipalities chosen from others elsewhere is their geographical location in the most populous, traffic-congested areas of the state. This is directly connected to the purpose of authorizing red light cameras – increasing traffic safety where the risks are most acute.

Plaintiffs' concern that the enabling act omits Winnebago County, which is more populous than Madison and St. Clair, Pls. Br. 35-36, overlooks that the classification is based on population and geographical location, combined. Madison and St. Clair border St. Louis. Winnebago, albeit slightly more populous, is many miles further away from Chicago and St. Louis.[15] This also distinguishes Rockford, Oswego, Kankakee,

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[14] Thus, the City does not ask the Court to "view the effect of this law only at the county level." Pls. Br. 35.

[15] Plaintiffs also claim that Winnebago has a 50% higher level of vehicle congestion than St. Clair, but they cite only a statement by their lawyer. Pls. Br. 36 (citing Tr. 33).

Springfield, Peoria, Champaign-Urbana, and Bloomington, which the enabling act omits. Id. at 34-36. These cities may be more populous than some municipalities in the selected areas, but it is entirely rational for the General Assembly to conclude that the selected areas see higher traffic volumes due to their locations. Again, the map confirms the stark differences. See http://www.countymapsofillinois.com/ (follow links to Winnebago, Kendall, Kankakee, Sangamon, Peoria, Champaign, and McLean Counties).

Vernon Hills and In re Belmont Fire Protection District, 111 Ill. 2d 373 (1986), on which plaintiffs rely, Pls. Br. 31-33, are inapposite. The laws in those cases permitted municipalities served by more than one fire protection district to consolidate into a single fire protection district – but only in two counties. Vernon Hills, 168 Ill. 2d at 120-21; Belmont, 111 Ill. 2d at 376, 381. This court held there was no connection between the population of these counties and the legislative purpose of allowing the consolidation of multiple fire protection districts. Vernon Hills, 168 Ill. 2d at 125-27; Belmont, 111 Ill. 2d at 381-84. In other words, multiple fire protection districts were no less of a concern in less populous counties. In contrast, here it was rational for the General Assembly to conclude that the population and location of the geographical areas selected does increase the degree of harm from red light violations.

At best, plaintiffs rely on one or two counterexamples, e.g., Pls. Br. 35 (arguing Oswego is 30 miles closer to Chicago and larger than Harvard, and Rockford is more populous than Lenzburg, which does not have red lights), but this does not rebut the rationality of the enabling act.[16] "[M]athematical precision in creating a classification is

[16] Moreover, if Lenzburg lacks red lights, it is not even a subject of the classification because, until it actually has red lights, it cannot avail itself of the enabling act's authorization for red light cameras – which, by definition, presupposes the existence

not required." Cutinello, 161 Ill. 2d at 421; see, e.g., Vernon Hills, 168 Ill. 2d at 128; Northern Illinois Home Builders, 165 Ill. 2d at 39-40. "Classifications are not required to be precise, accurate or harmonious so long as they accomplish the legislative purpose." Chicago National League Ball Club, 108 Ill. 2d at 372. That "the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." Cutinello, 161 Ill. 2d at 421 (internal quotations omitted). The General Assembly quite rationally could have believed that the line was best drawn at the eight selected locations – with their dense populations, closely spaced municipalities, multiple major thoroughfares, and immediate proximity to Chicago and St. Louis – even if that line was not perfectly precise because it excluded some municipalities that might also have benefitted and included others that might not need protection to the same degree.

Plaintiffs' reliance on the enabling act's legislative history, Pls. Br. 28-29, is misplaced. They argue that the enabling act could have been made general because initially the bill was drafted to be applicable to the entire state. Id. But the task under the rational-basis test is to decide whether the General Assembly had a rational basis for the law actually enacted – not some prior or other version. See Northern Illinois Home Builders, 165 Ill. 2d at 40 ("validity of one statutory classification is not properly tested by reference to another"). That the General Assembly could have conceived of a different law does not mean there is no rational basis for the law actually enacted. Indeed, that approach is not rational-basis scrutiny. Regardless, the legislative history does not show that the reason for limiting the law was that a broader law "was not politically palatable." Pls. Br. 29. The sponsor of the bill did state that some General Assembly members had

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of red lights in the authorized locations.

"indicated they didn't want to have this option in their counties." State of Illinois 94th General Assembly Regular Session, Senate Transcript 3/29/2006, at 22. But he did not explain why they did not, and it is equally conceivable that they did not believe red light violations were a sufficient problem in their counties to warrant red light cameras. In that case, it would not be irrational for the General Assembly to limit the law to areas where legislators agree red light violations are a problem. The bill's sponsor explained the limitation exactly that way – "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." Id.; see id. ("so we limited it to the more populous counties"); id. at 24 ("[I]t's really limited to those areas where this is a real concern."); see also id. at 22 ("motivation was to continue to reduce traffic deaths from people who run red lights"). If that problem did not exist in the counties of some members, it did in the eight named counties. And even if the problem also exists to a lesser extent elsewhere, "the legislature is not bound to pass one law meeting every exigency, but may consider degrees of evil." Cutinello, 161 Ill. 2d at 422 (internal quotations omitted).

Plaintiffs' concern about laws that "'close . . . the class as of the statute's effective date,'" Pls. Br. 27 (quoting Peoria, 2013 IL 114853 ¶ 54), is also misplaced. Peoria involved special, not local, legislation, and this court made clear that "[n]othing in the constitution bars the legislature from enacting a law specifically addressing the conditions of an entity that is uniquely situated, 2013 IL 114853 ¶ 55, or "addressing a problem unique to a particular geographic area," id. ¶ 57. There, the line was drawn between those school districts that had their own police officers as of the law's effective date and those that might later have police officers, and the court ruled it was irrational to limit the law

that way. Id. ¶ 59. Here, by contrast, there will be no future county that is both among the largest in the State and close to either Chicago or St. Louis – although counties may grow in population, none can relocate. This addresses plaintiffs' concern that the enabling act will not apply outside the eight selected areas "no matter how large, congested (or lawless)" others "may become." Pls. Br. 27; see also id. at 28 (expressing concern that law will not apply to "new entities as those entities come to meet whatever criteria (if any) originally informed the law's classification"); id. at 32 (new area cannot "'grow its way into' the classification"). Thus, the enabling act is a local law that could not have been made more general – it "applies to all who are similarly situated at the time of passage *or* in the future," 2013 IL 114853 ¶ 44 – because it applies to all the geographical locations in the state that are and will ever be both the most populous and situated outside a major urban center.

In any event, the "'closed class' problem," Pls. Br. 27, is a feature of special, and not local, legislation. Local laws address problems currently present in certain geographic areas. Under plaintiffs' argument, all local laws would be unconstitutional – because it is always possible that other locations may develop the need for a particular law in the future. There is no authority for that sweeping result. For example, even Braden and Cohn thought a local law could constitutionally give Onetown more dogcatchers if it were located next to "an uninhabited wilderness" that is a breeding ground for wild dogs. Braden & Cohn 208-09. Yet, in the future, packs of wild dogs might take up residence next to Twotown, which is not bordered by such a wilderness. Because the law was limited to towns next to uninhabited wildernesses, it would not apply to Twotown. Plainly, that some other location could develop a need for legislation

in the future should not defeat the rational basis for addressing a current problem in the location where it is most acute right now. No doubt, this is why this court has consistently allowed reform to take one step at a time. E.g., Chicago National League Ball Club, 108 Ill. 2d at 371. Here, the only locations in the State that are populous, traffic-heavy, and located near major urban centers are already covered. The enabling act accordingly is constitutional, and plaintiffs' tickets were authorized.

II. THE CITY HAS AND ALWAYS HAD HOME-RULE AUTHORITY FOR ITS RED LIGHT CAMERA ORDINANCE.

A determination that the enabling act is constitutional means there is no need for this court to consider whether the City had home-rule authority, independent of the enabling act's authorization, to enact the red light camera ordinance. The enabling act authorized the ordinance in 2006, and all tickets plaintiffs received were after the enabling act.[17] In turn, the uncontested fact that no plaintiff received a ticket before the enabling act's passage in 2006 means that plaintiffs lack standing to challenge the City's home-rule authority before 2006. We address plaintiffs' lack of standing in Part A below.

The home-rule issue arises only if this court believes plaintiffs have standing or finds that the enabling act is unconstitutional. The City's home-rule authority independently authorized the City to enact the red light camera ordinance and issue plaintiffs' tickets. We address the City's home-rule authority in Part B below.

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[17] In Part IV, below, we explain that plaintiffs have forfeited any argument that the City needed to perform the formality of reenacting its ordinance after the enabling act's passage because they omitted that issue from their petition for leave to appeal.

A. Plaintiffs Lack Standing To Challenge The City's 2003-06 Home-Rule Authority To Enact The Red Light Camera Ordinance.

Standing is the first requirement of any declaratory judgment action, and it requires a plaintiff to suffer an injury in fact to an interest that is legally cognizable. E.g., Flynn v. Ryan, 199 Ill. 2d 430, 436 (2002). Standing's two components are that "[t]here must be an actual controversy between adverse parties, and the party seeking the declaratory judgment must be interested in the controversy." Id. (internal quotations omitted). An actual controversy means a concrete dispute that the court can resolve, not one that is moot or premature such that it would require the court to render an advisory opinion. Id. at 437. And "interested" means that the party seeking relief has a personal claim that the court can redress, not an abstract curiosity on the subject. Id. In the context of challenging the validity of a law, "to have standing one must have sustained, or be in immediate danger of sustaining, a direct injury as a result of enforcement of the challenged statute." Messenger v. Edgar, 157 Ill. 2d 162, 171 (1993); accord, e.g., Flynn, 199 Ill. 2d at 437. Otherwise the "challenge requests [the] court to issue an advisory opinion." Flynn, 199 Ill. 2d at 438. Although the appellate court disagreed with the circuit court's conclusion that plaintiffs lacked standing, A56 ¶¶ 17-19, that is no bar to this court's consideration. Every court has the obligation to assess its own jurisdiction, e.g., People v. Lerch, 34 Ill. 2d 305, 306 (1966), and a lack of standing deprives the court of a justiciable matter, which, in turn, deprives the court of authority to proceed, e.g., Ferguson v. Patton, 2013 IL 112488 ¶¶ 21-23.

Plaintiffs' complaint admits that all plaintiffs received their red light camera tickets on dates that were after May 22, 2006, the effective date of the enabling act. A15-

A16 ¶¶ 77-78, 84, 90; A18 ¶ 103; C. 482-91 (documenting that plaintiff Charlie Peacock's red light violation notices were issued after May 22, 2006); see also C. 570-71 (City's motion to dismiss explaining Peacock's lack of standing). Plaintiffs were not injured by the City's exercise of its home-rule authority between 2003 and 2006, and, as of May 22, 2006, the General Assembly has expressly made clear no preemption was intended. Plaintiffs accordingly have no standing to seek a declaration that the General Assembly preempted the City's home-rule authority before 2006.

Plaintiffs' abstract curiosity cannot justify their request for an advisory opinion from this court. An advisory opinion is something the court "cannot do." Flynn, 199 Ill. 2d at 438. "A fundamental rule of constitutional law is that a court will not determine the constitutionality of a provision of a statute which does not affect the parties to the cause under consideration." Chicago Teachers Union, Local 1 v. Board of Education, 189 Ill. 2d 200, 206 (2000). Such is the case here. Because plaintiffs were ticketed after the 2006 enabling act expressly authorized the City to utilize red light cameras, a declaration that the City's ordinance was preempted before that time would have no effect on plaintiffs, nor provide plaintiffs with any relief. We recognize that should the court decide the enabling act is unconstitutional, then it will need to address whether the City's home-rule authority has been preempted, because that home-rule authority would be the sole authorization for the City's ordinance after 2006. Thus, we now turn to that issue.

B. The General Assembly Has Not Preempted The City's Home-Rule Authority To Enact The Red Light Camera Ordinance Nor To Adjudicate Tickets In Administrative Proceedings.

The Illinois Constitution grants home-rule units broad authority over their government and affairs, and this "power does not depend on any grant of authority by the

General Assembly." City of Chicago v. Roman, 184 Ill. 2d 504, 512 (1998). Indeed, 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." Ill. Const. art. VII, § 6(a). Moreover, the constitution requires that the "[p]owers and functions of home rule units shall be construed liberally." Id. § 6(m). The constitution intended to give home-rule units "the broadest powers possible." Scadron v. City of Des Plaines, 153 Ill. 2d 164, 174 (1992); accord, e.g., Palm v. 2800 Lake Shore Drive Condominium Association, 2013 IL 110505 ¶ 30; City of Chicago v. StubHub, Inc., 2011 IL 111127 ¶ 18 (2012) (modified on denial of reh'g). Thus, home-rule units, concurrently with the State, may enact regulations pertaining to their government and affairs unless the "General Assembly . . . specifically limit[s] the concurrent exercise or specifically declare[s] the State's exercise to be exclusive." Ill. Const. art. VII, § 6(i). In short, "the Illinois Constitution provides home rule units with the same powers as the sovereign, except when those powers are limited by the General Assembly." Palm, 2013 IL 110505 ¶ 32.

The City lacks home-rule authority in only two circumstances: (1) where the matter does not pertain to its government and affairs; or (2) where the General Assembly has expressly preempted its home-rule authority. Roman, 184 Ill. 2d at 512-20. Here, plaintiffs have never argued that the use of red light cameras to record vehicles on the City's roads is a subject outside the City's government and affairs, and plainly it is not. Instead, plaintiffs claim that the red light camera ordinance is preempted because "the General Assembly expressly required uniform enforcement of traffic rules . . . and specifically precluded" alternative enforcement schemes. Pls. Br. 14.

Preemption requires very specific language. Comprehensive legislation is insufficient to preempt home rule authority; the legislation in question "must 'contain express language that the area covered by the legislation is to be exclusively controlled by the State.'" Roman, 184 Ill. 2d at 517 (quoting Village of Bolingbrook v. Citizens Utilities Co., 158 Ill. 2d 133, 138 (1994)). The need for this specific language derives directly from the constitution, Ill. Const. art. VII, §§ 6(h), 6(i), and it applies to claims of both total and partial preemption. Roman, 184 Ill. 2d at 515-20. Moreover, the General Assembly is plainly aware of this constitutional prerequisite and therefore uses "very specific [language] when it wants to express its intention to limit the powers of home rule units." Village of Mundelein v. Franco, 317 Ill. App. 3d 512, 522 (2d Dist. 2000). Indeed, the General Assembly has codified the requirement for specific language in the Statute on Statutes. Palm, 2013 IL 110505 ¶ 32 (citing 5 ILCS 70/7 (2012)).

In this case, the ordinance creates liability for the owner of a vehicle when that vehicle is caught by red light camera violating a red light signal. Under the red light camera ordinance, the driver has no liability whatsoever. Municipal Code of Chicago, Ill. § 9-102-020(a). In fact, if the driver of the vehicle has been ticketed for violating the red light signal under other applicable laws, the owner cannot be liable under the ordinance. Id. §§ 9-102-020(a)(1), 9-102-40(1). Thus, the red light camera ordinance applies only where the driver has not been observed or ticketed by a law enforcement officer – in other words, only when the vehicle's driver would otherwise get away with the offense.

There is no preemption here. No specific language preempts the City's authority to create an offense for vehicle owners or adjudicate the resulting tickets in administrative proceedings. And preemption of the authority to adjudicate tickets is a separate question

from preemption of the authority to ticket – plainly, a determination that the City's authority to adjudicate red light tickets in administrative proceedings is preempted would not itself invalidate the offense under a red light camera ordinance or the City's home-rule authority to ticket vehicle owners for that offense. It would mean only that red light camera violations must be adjudicated in circuit court. We address these separate home-rule powers in turn.

1. The General Assembly has not preempted the City's home-rule authority to ticket plaintiffs.

As we have explained, before plaintiffs can succeed on a preemption claim, they were required to identify a statute that specifically preempts the City's home-rule authority, and none of the statutes that plaintiffs rely on, Pls. Br. 15-17, expressly preempts the City from holding vehicle owners liable for red light camera violations.

First, plaintiffs rely on generalities about the State's rules of the road and the State's "driver's education curricula" for the point that the Illinois Vehicle Code requires drivers to stop at red lights. Pls. Br. 15. They claim that municipalities may adopt the Illinois Vehicle Code, but may not adopt ordinances that conflict with it. Id. This is all irrelevant to whether the General Assembly has expressly preempted a red light camera ordinance, like the City's, which creates liability only for vehicle owners and not for drivers. There is no dispute that the Vehicle Code creates liability, in certain circumstances, for a driver who fails to stop at a red light, 625 ILCS 5/11-306 (2012), and the City has adopted its own parallel ordinances on that subject, Municipal Code of Chicago, Ill. §§ 9-8-020(c); 9-16-030 (2013). But these ordinances are not the ones at issue. And the one at issue has no parallel in the Illinois Vehicle Code. There is no state

offense directed at the vehicle's owner when his or her vehicle is caught by camera violating a red light signal. Thus, there is no overlap whatsoever between the State's scheme, which applies drivers, and the red light camera ordinance, which applies to owners. In fact, as we also explain, there is no liability under the City's ordinance when the driver is ticketed under state laws or City ordinances pertaining to drivers. In other words, the Vehicle Code and the red light camera ordinance cannot both apply to the same red light violation. At most, both the Vehicle Code and the red light camera ordinance touch on the general regulatory field of road safety, and "[t]he mere existence of State interest and activity in a particular field does not alone preclude home rule activity," StubHub, 2011 IL 111127 ¶ 23 (internal quotations omitted).

Next, plaintiffs rely on 625 ILCS 5/11-207 (2012), which states that the provisions of Chapter 11 (the Rules of the Road) "shall be applicable and uniform throughout this State," and further that "no local authority shall enact or enforce any ordinance rule or regulation in conflict with [Chapter 11] unless expressly authorized herein." Id. (emphasis added). The Rules of the Road found in Chapter 11 – including the provisions concerning red light signals – are applicable and uniform in the City, just as in the rest of the State. The red light camera ordinance does not change nor negate any provision found in Chapter 11 – for example, it does not permit drivers to violate red light signals, while state law requires drivers to obey red light signals. Indeed, plaintiffs point to no provision of Chapter 11 that is inapplicable in the City. Moreover, the red light camera ordinance does not "conflict with" any provision in Chapter 11. Again, the City's red light camera ordinance creates liability for owners and does not prevent the enforcement of Chapter 11 against drivers. Because the ordinance does not apply when

the driver is ticketed under Chapter 11, the ordinance properly givers precedence to Chapter 11. As such, it fits comfortably within section 5/11-207's express authorization for local authorities to "adopt additional traffic regulations which are not in conflict with the provisions of this Chapter." Id. Indeed, that was the ordinance's express purpose – to "supplement enforcement of traffic regulations provided by . . . the Municipal Code and the Illinois Motor Vehicle Code and . . . not [to] replace or substitute for enforcement of these or any other law." Municipal Code of Chicago, Ill. § 9-102-070.

The same goes for 625 ILCS 5/11-208.1 (2012). It requires Chapter 11 to be "applicable and uniformly applied and enforced throughout this State." Id. Again, Chapter 11's requirement for drivers to obey red light signals is applicable in the City, and it is applied and enforced in the same manner in Chicago as elsewhere. Plaintiffs complain that "uniform" means red light violations must be enforced by police officers; prosecutions must occur in circuit court; and violations must be reported to the Secretary of State. Pls. Br. 17. But that is exactly how Chapter 11 is enforced in the City. When a law enforcement officer in Chicago catches a driver violating Chapter 11, that offense is ticketed the same way as elsewhere; the ticket is adjudicated in circuit court in the same manner as in the rest of the State; and the violation is reported to the Secretary of State so it can be noted on the driver's record. It is only when applying and enforcing Chapter 11 against the driver is not possible (such as when no law enforcement officer observed the violation) that the City's red light camera ordinance permits a different kind of liability – for the vehicle's owner.[18] Thus, the red light camera ordinance applies when Chapter 11

[18] This explains why reporting to the Secretary of State is not necessary nor possible for red light camera violations – the owner, who is the one liable under the ordinance, may or may not have been the one driving. It would not be fair to report the

cannot be applied. As we have explained, specific language is required for preemption. Section 5/11-208.1's requirement regarding uniform application and enforcement of Chapter 11 simply does not limit the City's authority to impose on vehicle owners a different kind of liability not found in Chapter 11. Indeed, as this court has recognized, a statute that is not "'in the required form'" does not preempt, Palm, 2013 IL 110505 ¶ 42 (quoting Roman, 184 Ill. 2d at 519), and even "[c]omprehensive legislation that conflicts with an ordinance is insufficient to limit or restrict home rule authority," id. ¶ 43.

Finally, plaintiffs rely on 625 ILCS 5/11-208.2 (2012), which provides that Chapter 11 "limit[s] the authority of home rule units to adopt local police regulations inconsistent herewith." Id. (emphasis added). Although this contains the language required for preemption, it does not apply to the red light camera ordinance, because, again, that ordinance is not inconsistent with anything in Chapter 11. The ordinance does not apply when Chapter 11 is enforced against the vehicle's driver, and nothing in the ordinance prevents the enforcement of Chapter 11 against drivers. It is plainly not inconsistent to impose liability on vehicle owners for a different offense.

Plaintiffs' remaining arguments are premised on a fundamental misunderstanding of home-rule authority. They claim it "was [not] necessary for the General Assembly to specifically prohibit municipalities from adopting red-light camera ordinances." Pls. Br. 19. But as we have explained, there is no preemption unless the General Assembly does so specifically. So-called "general[ ]" proscription, id., does not exist. Again, even a comprehensive scheme does not constitute preemption. Thus, the General Assembly in

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offense to the Secretary of State for purpose of noting it on the owner's driving record when it is impossible to say whether the red light violation was the owner's.

fact was "required to think of" whatever traffic laws that it wanted to preempt "and prohibit each [type] specifically." Id. Unless the General Assembly does so, the City has the authority by virtue of the Illinois Constitution to regulate concurrently with the State, in whatever manner it chooses, so long as the subject matter is within its government and affairs, which plaintiffs do not dispute here.

For this same reason, plaintiffs' *expressio unis est exclusio alterius* argument, Pls. Br. 20, is utterly unavailing. Indeed, the constitution's home-rule provisions were intentionally "designed to prevent implied preemption, or preemption by judicial interpretation." StubHub, 2011 IL 111127 ¶ 21. Yet, that is what the *expressio unis* doctrine does – it allows the courts to determine what the General Assembly must have meant by reasoning based on implication from some other provision. Nothing could be further from the express preemption that the constitution requires.

Plaintiffs' argument that the General Assembly would not have had to pass the enabling act if the City already had home-rule authority for it, Pls. Br. 20-21, is equally misplaced. While we agree the City did not need the General Assembly's authorization for its red light camera ordinance (because the constitution authorizes the City to regulate concurrently with the State), that does not mean the statute is surplusage. For one thing, there are non-home-rule local governments in the eight counties covered by the statute. For another, the General Assembly is free to make clear that red light cameras in the City as well as other home-rule governments in the eight counties are authorized. That statutory authority says nothing whatsoever about whether the City, as a home-rule unit, has independent authority.

In short, nothing preempts the City's authority to enact its red light camera

ordinance. Indeed, the enabling act itself should make clear that the General Assembly did not intend that the statutes on which plaintiffs rely would preempt this authority, even before the enabling act, much less after, which is when plaintiffs were ticketed.

2. The General Assembly has not preempted the City's home-rule authority to adjudicate red light camera violations in administrative proceedings.

The City likewise may adjudicate liability for violations of its red light camera ordinance in administrative proceedings. The Illinois Municipal Code generally permits administrative adjudication of municipal offenses. There is an exception for "a similar offense [to one under the Vehicle Code] that is a traffic regulation governing the movement of vehicles." 65 ILCS 5/1-2.1-2 (2012).[19] For this exception to preempt, the red light camera ordinance must be both "similar" to an "offense under the Illinois Vehicle Code" and "a traffic regulation governing the movement of vehicles." Id.

The red light camera ordinance is neither. First, as we have explained, the ordinance creates liability for the owner of a vehicle that runs a red light. The Vehicle Code contains no such offense by vehicle owners, nor any similar offense. It concerns only drivers.

Second, the red light camera ordinance governs the ownership of vehicles, rather than their movement, by creating liability for owners whose vehicle is used in the commission of an illegal act. In this way, it is similar to numerous other offenses – including parking regulations, Municipal Code of Chicago, Ill. § 9-100-030(a) (2013), and laws permitting seizure of vehicles found to contain drugs, id. § 7-24-225 – where the

[19] There is also an exception for "any offense under the Illinois Vehicle Code," but even plaintiffs do not contend this applies. And plainly a red light camera violation is under the ordinance, not the Vehicle Code.

owner is liable for illegal use of the vehicle, but not for the underlying illegal act per se. In fact, that is precisely why the offense is not reportable as a driving violation – because the liability is premised on the ownership rather than the owner's driving.

Regardless, an offense that governs the movement of vehicles is not alone enough for preemption, but only where the offense is like one in the Vehicle Code. No doubt the General Assembly intended that driving offenses and other offenses reportable to the Secretary of State would be adjudicated uniformly throughout the State to maintain the uniformity of driving records statewide. But as we explain, the red light camera ordinance is not like any offense in the Vehicle Code, and violations are not reportable on anyone's driving record, so the purpose behind uniform enforcement is missing.

Most important, the General Assembly itself expressed that it lacked intent to preempt administrative enforcement of red light camera offenses. The 2006 enabling act states that a red light camera violation "is not a violation of a traffic regulation governing the movement of vehicles." 625 ILCS 5/11-208.6(j); see also Fischetti v. Village of Schaumburg, 2012 IL App (1st) 111008 ¶¶ 7, 10. There is no reason to think that the General Assembly had a different view before 2006 or that this announcement was intended to work any change to the law. Moreover, plaintiffs' tickets followed this express declaration. Because the clear intent necessary to preempt administrative adjudication of these violations never existed, there is no preemption. Again, "implied preemption" is prohibited. StubHub, 2011 IL 111127 ¶ 21.

3. Plaintiffs' cases do not show that the red light camera ordinance is preempted.

Plaintiffs' reliance on cases involving other types of ordinances does not assist

their preemption argument because preemption is context-specific. Again, the General Assembly must expressly preempt home-rule authority. Thus, whether preemption did or did not exist in another case, concerning different laws, cannot aid the analysis here.

None of plaintiffs' cases is on point in any event. In Village of Park Forest v. Thomason, 145 Ill. App. 3d 327 (1st Dist. 1986), the court held that the General Assembly had established exclusive control over the subject of drunk driving under section 11-501(c) of the Vehicle Code and the general statutory scheme, which preempted lesser penalties by ordinance. Id. at 330-31. In this case, there is no express preemption, nor any intent to establish exclusive State control. Moreover, the City's red light camera ordinance does not provide lesser penalties for any offense in the Vehicle Code – again, the Vehicle Code imposes no liability at all on vehicle owners for red light violations.

For this same reason, plaintiffs' reliance on a 1992 Illinois Attorney General opinion, Pls. Br. 21, is misplaced. That opinion concerned municipalities' ability to utilize different penalties and mechanisms to enforce traffic offenses found in the Vehicle Code, and concluded this was not authorized where state statutes "specify penalties and the manner of enforcement." Opinion of Attorney General No. 92-013, at 6 (June 22, 1992) (available at http://www.illinoisattorneygeneral.gov/opinions/1992/index.html). Here, the City's red light camera ordinance creates an offense that is not in the Vehicle Code or any other state statute. The opinion simply does not apply.

Plaintiffs' reliance on People ex rel. Ryan v. Village of Hanover Park, 311 Ill. App. 3d 515 (1st Dist. 1999), Pls. Br. 22-23, is equally misplaced. There, too, the ordinances at issue did not create a new municipal offense, but created alternative enforcement programs that allowed those charged with violating the Vehicle Code to pay

a settlement and avoid court adjudication, which "eliminate[d] the possibility of the offender receiving a conviction for the offense and having the conviction reported to the Secretary of State." 311 Ill. App. 3d at 518-19; see also id. at 520 (describing the various enforcement schemes). The court held that "these programs disrupt the uniform enforcement of the Code's rules of the road provided in chapter 11" and "violate the spirit and intent of the Code." Id. at 524.

Hanover Park does not affect the City's authority to enact its red light camera ordinance, or even to enforce that ordinance through administrative adjudication. As we have explained, the ordinance does not enforce the Vehicle Code. Indeed, the court acknowledged that "the legislature has not preempted the field of traffic regulation," 311 Ill. App. 3d at 525, and "express[ed] no opinion on whether defendants have the authority to implement alternative enforcement programs for other chapters of the Code" besides Chapter 11, id. at 524. Again, the Vehicle Code does not penalize vehicle owners for red light camera violations. Nor does administrative enforcement of the ordinance interfere with uniform enforcement of any provision of Chapter 11 – again, the ordinance does not apply unless the driver has not received a uniform citation under Chapter 11.

Nor is there a conflict with Catom Trucking, Inc. v. City of Chicago, 2011 IL App (1st) 101146, see Pls. Br. 23-24. Catom concerned provisions for liability for the operation of overweight vehicles on City streets that were similar to provisions of the Vehicle Code. 2011 IL App (1st) 101146 ¶¶ 13-14. The court concluded that these traffic regulations governed the movement of vehicles and could not be enforced through administrative proceedings. Id. ¶ 18. Nothing in Catom shows that the red light camera ordinance is also a traffic regulation governing the movement of vehicles that cannot be

enforced through administrative proceedings. To the contrary, as we have explained, there is no provision in Chapter 11 of the Vehicle Code similar to the ordinance.

Finally, Village of Mundelein, on which plaintiffs rely, Pls. Br. 24, actually supports our argument. The court held that the General Assembly had not preempted municipalities from enacting and enforcing ordinances requiring the use of seatbelts by a provision in Chapter 12 of the Vehicle Code because preemption applies only to Chapter 11, 317 Ill. App. 3d at 517-22, and then only to ordinances that are "inconsistent with the provisions of chapter 11 of the Vehicle Code," id. at 521. Again, there is no offense like the red light camera ordinance found in Chapter 11, or indeed in any chapter, of the Vehicle Code, nor is the ordinance inconsistent with any provision in the Vehicle Code, because it does not apply when the Vehicle Code does, as we have explained.

In short, independent of the enabling act, the red light camera ordinance is within the City's government and affairs, and the General Assembly has not expressed any intent to preempt either the ordinance itself or the administrative adjudication of red light camera violations.

III. PLAINTIFFS' RESTITUTION CLAIM IS BARRED BY THE VOLUNTARY PAYMENT DOCTRINE.

Dismissal of plaintiffs' restitution claim can also be affirmed on the basis that it is barred by the voluntary payment doctrine. The City is free to assert any ground supported by the record to defend the circuit court's judgment. E.g., In re Detention of Stanbridge, 2012 IL 112337 ¶ 74. The voluntary payment doctrine is "'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.'" Getto v. City of Chicago, 86 Ill. 2d 39, 48-49 (1981) (quoting Illinois Glass Co. v. Chicago Telephone Co., 234 Ill. 535, 541 (1908)). There is an exception if facts are unknown or "'there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion.'" Id. at 49 (quoting Illinois Glass, 234 Ill. at 541).

Plaintiffs admit that they paid their fines. A16-A18 ¶¶ 79, 85, 91, 97, 110. They clearly knew the facts upon which the fines were based since they all admit receiving notices alleging they were liable for the red light violations. A15-A18 ¶¶ 78, 84, 90, 96, 103. And there was no necessity for plaintiffs to pay at that time because they could have challenged the tickets administratively. See Municipal Code of Chicago, Ill. § 9-102-040. Only one plaintiff, DiGregorio, sought an administrative hearing, and she did not thereafter pursue administrative review in circuit court. A18 ¶¶ 104-110. Having voluntarily paid the fines, plaintiffs are barred from seeking restitution.

Plaintiffs did not allege that they were operating under a mistake of fact concerning the fines they paid.[20] Nor did they allege that their payments were for any necessity of life. Indeed, below, plaintiffs conceded that "this case is different from the cases involving taxes on goods or services," and they agreed the necessity test is "inapplicable" here. Brief of Plaintiffs-Appellants, No. 11-2559, at 43 [hereafter "Pls.

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[20] Below, in a footnote, plaintiffs argued that mistakes of law also should be an exception to the voluntary payment doctrine. Brief of Plaintiffs-Appellants, No. 11-2559, at 40-41 n.11. That would eviscerate the voluntary payment doctrine because every plaintiff can claim a mistake of fact or lack of knowledge that the demand for the payment was illegal as a matter of law. This court should not abolish the voluntary payment doctrine. Plaintiffs, in any event, did not allege they were under any mistake whether the ordinance was invalid at the time they paid their fines. In fact, DiGregorio acknowledged that she urged the unconstitutionality of the ordinance at an administrative hearing before she paid the fine. A18 ¶¶ 104-10.

App. Br."]. Instead, they alleged the payments were made "under coercion of law and threat of adverse legal consequences." A16-A18 ¶¶ 79, 85, 91, 97, 110. They claimed that they "were not at liberty simply to disregard [the red light camera] citation" and that the City's payment demands "are compulsory and must be obeyed." Pls. App. Br. 43. This claim rests on the belief plaintiffs could not have pursued administrative review without facing penalties, see id. at 44-46, in particular the booting of their vehicles; doubling of their fines; or the loss of driving privileges, see id. at 44.

Plaintiffs are wrong. They could have challenged their red light camera tickets without incurring adverse consequences until after the proceedings were resolved. The ordinance is very clear that "after a determination of liability under this chapter has become final and the respondent has exhausted or failed to exhaust judicial procedures for review," a final determination of liability notice is sent, and the respondent becomes subject to collection procedures for "a debt due and owing the city" under section 2-14-103 or, eventually, immobilization of the vehicle under section 9-100-120. Municipal Code of Chicago, Ill. § 9-102-060(a) & (b) (emphasis added).[21] Thus, plaintiffs had an alternative to paying the fines, rendering voluntary the payments they made instead. They could have proceeded with judicial review of the City's authority for the red light camera ordinance before the determination of liability against them could become final and collection practices could ensue.

The appellate court believed that the Code does not allow plaintiffs to challenge the City's legal authority for their fines through court proceedings before incurring

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[21] This provision now appears in Municipal Code of Chicago, Ill. § 9-100-100(a) & (b) (2013).

liability and facing enforcement procedures such as vehicle immobilization. A77-A81. That misreads the Municipal Code, which differentiates between a determination of liability and a final determination of liability. The red light camera ordinance provided, at the time plaintiffs were ticketed, that determinations of liability shall be made in accordance with the Municipal Code provisions that govern administrative adjudications. Municipal Code of Chicago, Ill. § 9-102-050. In turn, those provisions contain procedures for challenging violations by mail or through in-person hearings and describe the manner in which determinations of liability or no liability can be entered. Id. §§ 9-100-050 & 9-100-070 to -090 (2013). The City may not begin collection proceedings even then. Instead, only after "the respondent has exhausted or failed to exhaust judicial procedures for review" does the City send "a notice of final determination of liability" to the respondent. Id. § 9-102-060(a) (emphasis added). And only after that – if "[a]ny fine and penalty . . . remain[s] unpaid after the notice of final determination of liability is sent" – does the unpaid amount become "a debt due and owing the city which may be enforced in the manner set forth in Section 2-14-103" of the Municipal Code, including through immobilization of the vehicle. Id. § 9-102-060(b) (emphasis added); see also id. § 9-100-100 (2013) (current general provision for notices of final determination). In other words, there is no final determination of liability – and no collection – until after the respondent has exhausted or failed to exhaust procedures for judicial review, including any challenge to the constitutionality of the ordinance. Indeed, the Code expressly provides a defense to vehicle immobilization where no final determination of liability for a red light camera violation has been issued. Id. § 9-100-120(b)(3). Thus, contrary to the appellate court's belief, A80-A81, no judicial stay is necessary before collection procedures ensue –

because no final determination notice can issue until judicial proceedings are resolved.

The appellate court also mistakenly relied on the belief that the validity of the ordinance cannot be challenged during the City's administrative review process. A81 ¶ 74. That misses the point. Although the agency will not decide the issue during the administrative proceeding, it is necessary to raise it in there to preserve it for administrative review, where it can be decided. E.g., Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 214 (2008). This also answers plaintiffs' concern that administrative review is limited to the record from the administrative hearing and that "administrative review is, literally, a complete waste of time." Pls. App. Br. 45-46. Had plaintiffs raised the issue before the administrative agency, their challenges would have been part of the record to which review would be limited. Moreover, the circuit court is empowered to consider the administrative review claim simultaneously with the challenge to the validity of the ordinance. E.g., Chicago Bar Association v. Department of Revenue, 163 Ill. 2d 290, 297 (1994). Raising the issue is therefore far from a waste of time; it is, in fact, a necessity. As for plaintiffs' complaint below about the cost of the court filing fee, Pls. App. Br. 46, that is no excuse for not following through with administrative review. The amount of the filing fee is outside the City's control, since it is set by state statute. See Van Harken v. City of Chicago, 305 Ill. App. 3d 972 (1st Dist. 1999) (filing fee set by statute and, in administrative review, there is no "constitutional right to avoid payment of a filing fee"). Moreover, victorious administrative review plaintiffs commonly ask the circuit court to refund the filing fee. Regardless, the choice to pay the red light camera fine rather than pursue a challenge to the ordinance is still a choice, and thus a voluntary decision.

Plaintiffs also contended below that they were not required to pursue administrative remedies before challenging the law in circuit court. See Pls. App. Br. 46. That is true, and plaintiffs are before this court asserting their claim for restitution. Our argument is not failure to exhaust administrative remedies, but voluntary payment. Once plaintiffs asserted their claims, the City was entitled to assert any applicable affirmative defenses to restitution, including that plaintiffs voluntarily paid their fines although they did not have to do so to challenge them. By definition, raising an affirmative defense in a section 2-619(a) motion concedes the legal sufficiency of the cause of action. E.g., Barber v. American Airlines, Inc., 241 Ill. 2d 450, 455 (2011).

This is not the first time the voluntary payment doctrine was asserted in a case challenging municipal fines. In Berg v. City of Chicago, 97 Ill. App. 2d 410 (1st Dist. 1968), the appellate court held that a claim alleging the invalidity of the City's traffic ordinances was barred by the voluntary payment doctrine. See id. at 421-25. As the court explained, payment is voluntary and no recovery is possible "where, at the time of payment . . ., the accused has an option to pay the fine or to appeal." Id. at 422. Because the plaintiffs had not appealed, the court held that the fines were paid under mistake of law, not under duress. See id. at 425; see also Lusinski v. Dominick's Finer Foods, 136 Ill. App. 3d 640, 645 (1st Dist. 1985) (duress only where there is "no reasonable means of immediate relief except by" making payment) (internal quotation marks omitted). The appellate court distinguished Berg on the ground that plaintiffs were not required to exhaust administrative remedies before challenging the validity of the ordinance. A81-A82. But as we have explained, our defense is not failing to exhaust administrative remedies, but rather voluntary payment. That plaintiffs may have a valid cause of action

to challenge the ordinance simply cannot negate an affirmative defense that is applicable because they paid their fines before that challenge was resolved. In short, plaintiffs are barred by the voluntary payment doctrine from seeking restitution.

IV. PLAINTIFFS FORFEITED THE ARGUMENT THE CITY NEEDED TO REENACT ITS ORDINANCE.

This court has long held that an appellant forfeits an issue that was not raised in the petition for leave to appeal. This court's rules require the petitioner to include in the petition for leave to appeal "a statement of the points relied upon in asking the Supreme Court to review the judgment of the Appellate Court." Ill. Sup. Ct. R. 315(c)(3). If the petitioner fails to do so, the issue is forfeited, and may not properly be asserted in the appellant's brief. People v. Fitzpatrick, 2013 IL 113449 ¶ 26; People v. McDonough, 239 Ill. 2d 260, 276 (2010); 1350 Lake Shore Associates v. Healey, 223 Ill. 2d 607, 629 (2006). Here, plaintiffs did not raise in either their points relied upon in seeking review or their argument one of the questions they now assert in their appellants' brief – whether, if this court upholds the 2006 enabling act, the City was obliged to reenact its red light camera ordinance after the enabling act because the ordinance was void when enacted in 2003. Pls. Br. 45-50. Plaintiffs, therefore, forfeited the issue.

Although the failure to include an issue in the petition for leave to appeal is not jurisdictional, e.g., Dineen v. City of Chicago, 125 Ill. 2d 248, 265-66 (1988), the court should not overlook the forfeiture. This court has elected not to overlook a forfeiture, where, as here, the issue was not decided below. E.g., id. at 266. In this case, plaintiffs also failed to present this issue in the circuit court.[22] Because of this waiver, the appellate

[22] That alone constitutes waiver, e.g., Parks v. Kownacki, 193 Ill. 2d 164, 180 (2000), as the appellate court correctly recognized, A56-A57 ¶ 20. Plaintiffs neither

court did not address plaintiffs' argument that the City needed to reenact its ordinance after the enabling act. A56-A57 ¶ 20. In short, neither the circuit nor appellate court has adjudicated the merits of this issue. This court should not do so either.

To be sure, plaintiffs challenge the appellate court's holding on waiver, Pls. Br. 48-49, but their problem now is not just waiver below, but forfeiture before this court. In any event, plaintiffs' waiver argument makes no sense. They claim that they could not have known before the City's circuit court reply brief that they needed to argue that, after the enabling act's authorization, the City could not enforce the ordinance against them unless it were reenacted. Id. Plaintiffs should not be allowed to shift this responsibility to the City. Their tickets were all issued after the enabling act. Thus, to challenge the tickets, plaintiffs needed to show the enabling act was unconstitutional, or some other reason the ordinance could not be enforced against them. Indeed, that is no doubt why they challenged the constitutionality of the enabling act in their complaint. Plaintiffs' claim that the enabling act did not authorize the City's ordinance because the City needed to reenact the ordinance first is a different theory. Thus, it was incumbent on plaintiffs to allege this in their complaint and to argue it in the circuit court. "[A]s a fact-pleading jurisdiction, Illinois does not permit plaintiffs to make vague allegations and then introduce specific theories as it suits them during litigation." Fischetti, 2012 IL App (1st) 111008 ¶ 15.

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alleged in their complaint nor argued in the circuit court that, assuming the constitutionality of the enabling act, the City needed to reenact its 2003 ordinance to rely on the enabling act's authorization for red light camera ordinances because it was void when enacted. Instead, they alleged that the enabling act is unconstitutional, and that the ordinance could not be justified by the City's home-rule authority, which they contended did not exist in 2003. A21-A23 ¶¶ 120-34.

If plaintiffs did need to be alerted to this theory of their own case, the City's memorandum of law in support of its motion to dismiss put plaintiffs on notice of the position that the enabling act authorized the City to ticket plaintiffs. There, the City explained that it was addressing plaintiffs' claim "that the City's [ordinance] was invalid even after the enactment of the [enabling act]" because the act violates the special or local provision of the Illinois Constitution, and argued that the "claim[ ] fail[s]" because the enabling act is constitutional. C. 562 (emphasis added). The City went on to explain why the enabling act is constitutional and that it authorizes red light cameras in Cook County, among other places. C. 564. The City concluded that "because a rational basis exists to authorize [red light cameras] in the Eight Counties, Plaintiffs' special legislation claim should be dismissed." C. 566. In short, plaintiffs simply failed to assert "a good cause of action," Pls. Br. 49, that the City needed to do something else after the enabling act's express authorization before it could ticket plaintiffs.

This court should not overlook the forfeiture for the additional reason that plaintiffs' contention that the City's ordinance was void when enacted is plainly wrong. Plaintiffs rely on cases, Pls. Br. 45-48, in which courts considered whether non-home-rule governments – which have only the powers the General Assembly grants them – lacked power to enact particular ordinances at the time they were enacted because statutory authorization was lacking, see People ex rel. Larson v. Thompson, 377 Ill. 104, 108-14 (1941); Village of River Forest v. Midwest Bank & Trust Co., 12 Ill. App. 3d 136, 139-40 (1st Dist. 1973); Two Hundred Nine Lake Shore Drive Building Corp. v. City of Chicago, 3 Ill. App. 3d 46, 49-50 (1st Dist. 1972) (City's power before 1970 Constitution); because the ordinances operated outside the scope of statutory authority, see People ex rel. Shore

v. Helmer, 410 Ill. 420, 425-28 (1951) (law upheld); People ex rel. Rhodes v. Miller, 392 Ill. 445, 446-47 (1946); or because the ordinance operated outside the municipality's boundaries, see Dean Milk Co. v. City of Aurora, 404 Ill. 331, 334-35 (1949); see also People v. Burney, 2011 IL App (4th) 100343 ¶ 101 (trial court imposed fee without statutory authority).[23]

It is no accident that plaintiffs found no case holding a home-rule enactment after the 1970 Constitution was void.[24] As a home-rule unit, the City had the inherent power to enact a red light camera ordinance in 2003. Again, even plaintiffs do not claim that the subject matter is outside the City's government and affairs. And while plaintiffs claim that the General Assembly preempted the City's power to enact the ordinance and to adjudicate violations in administrative proceedings, that is no basis for finding that the City lacked inherent power to legislate on the subject in the first place such that its enactment should be deemed void. In Lily Lake Road Defenders v. County of McHenry, 156 Ill. 2d 1 (1993), this court recognized that preemption is different from void due to a lack of inherent power, holding that a county ordinance could be enforced without reenactment, after the General Assembly rescinded preemption, id. at 13-15; accord City of Burbank v. Czaja, 331 Ill. App. 3d 369, 375-78 (1st Dist. 2002); id. at 378 (preemption

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[23] Alternatively, plaintiffs cite People v. Blair, 2013 IL 114122, which explained the effect of laws that are declared unconstitutional by courts, rendering them void. Id. ¶ 28 ("when statute is held facially unconstitutional" then it is void). But no court has ever held that the City's ordinance is unconstitutional or void.

[24] Although In re County Collector of Kane County, 172 Ill. App. 3d 897 (2d Dist. 1988), involved a home-rule unit, the court did not premise its holding on an interpretation of home-rule powers, but held instead that the municipality was bound by its own ordinance, which had been enacted while a non-home-rule unit prior to the 1970 Constitution and which referenced provisions of the General Assembly's prior statutory authorization. Id. at 902-04.

renders ordinance "dormant," not null and void). The 2006 enabling act plainly removed whatever preemption, if any, existed before 2006. The City's ordinance, enacted pursuant to its home-rule powers, accordingly did not need to be reenacted. In fact, such a formality would impinge on the autonomy of home-rule units.

Finally, the City has reenacted the ordinance since 2006 in any event. On four occasions since the enabling act, the City has restructured and revised the ordinance. See Journal of Proceedings of the City Council of the City of Chicago, Ill., Nov. 13, 2007, at 15005-07; id. Dec. 2, 2009, at 78879; id. Nov. 16, 2011, at 13890-91; id. Apr. 18, 2012, at 23762, 23777-81.[25] Clearly, the City Council's intent was to continue the law in effect to take advantage of the legislature's authorization for red light camera ordinances. Indeed, some of the amendments even reference the enabling act's provisions. Section 9-102-015, added in April 2012, defines "recorded image" to have "the same meaning ascribed to that term in Section 11-208.6 of the Illinois Vehicle Code, 625 ILCS 5/11-208.6." Id. Apr. 18, 2012, at 23778. And section 9-102-020(d), as amended, provides that recorded images must be "reviewed in accordance with Section 11-208.3(b)(3) of the Illinois Vehicle Code, 625 ILCS 5/11-208.3." Id. at 23779.

Plaintiffs make no claim that the amended sections of the ordinance are insufficient reenactments. Instead, they claim that the unamended sections first needed to be wiped from the books and replaced before those sections could be effective. Pls. Br. 49-50. But plaintiffs fail to explain what purpose such a technicality would serve. They

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[25] The most recent amendments repealed sections 9-102-050 (determination of liability, which had referenced Chapter 9-100 of the Code) and 9-102-060 (notice of final determination of liability), and amended section 9-102-030 to state that administrative adjudication "shall be as set forth in Chapter 9-100." Journal of Proceedings, Apr. 18, 2012, at 23779, 23781.

rely on a rule of statutory construction that when portions of an old ordinance are repeated or retained, they are "not . . . the enactment of a new ordinance," but a "continuation of the old ordinance." Id. (internal quotations and emphasis omitted). But the issue here is not a difference between the original and amended ordinance that requires resolution by statutory construction.[26] When the City Council amended the red light camera ordinance to reference the enabling act and continue in force the rest of the ordinance, it clearly intended to take advantage of the express legislative authorization.

CONCLUSION

This court should therefore affirm the judgment of the circuit and appellate courts.

Respectfully submitted,

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[26] Moreover, this rule of statutory construction is inapplicable where the prior enactment was potentially unconstitutional or invalid. In Davis v. City of Chicago, 59 Ill. 2d 439, 444 (1974), the court did not apply the rule that repeating provisions is not a new enactment, but held an amendment with only one minor change was effective prospectively, noting the legislature's intent to take advantage of new constitutional authority for the legislation and to "dispel the questions as to its validity." Id.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms with the requirements of Rules 341(a) and (b) and 315(h). 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.

KERRIE MALONEY LAYTIN, Attorney

CERTIFICATE OF MAILING

I certify that I filed the Brief of Defendant-Appellee City of Chicago by placing the original and 19 copies in an envelope with sufficient postage affixed and directed to the person named below, at the address indicated, and depositing that envelope in the United States mail on March 19, 2014.

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CERTIFICATE OF SERVICE

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