No. 129164

In the

# Supreme Court of Illinois

CITY OF ROCK FALLS, an Illinois municipal corporation,

*Appellee,*

v.

AIMS INDUSTRIAL SERVICES, LLC, an Illinois limited liability company,

*Appellant.*

On Petition for Leave to Appeal from the Illinois Appellate Court,
Fourth Judicial District, No. 4-22-0208.
There Heard on Appeal from the Circuit Court of the Fourteenth Judicial Circuit,
Whiteside County, Illinois, No. 2019 CH 85.
The Honorable **Stanley B. Steines**, Judge Presiding.

## BRIEF OF APPELLEE CITY OF ROCK FALLS

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## COUNTERSTATEMENT OF FACTS

### Background

On March 3, 2017, the Respondent-Appellant, Aims Industrial Services, LLC ("Aims"), purchased certain real property located within the City of Rock Falls ("City"), commonly known as 2103 Industrial Park Road, Rock Falls, Illinois 61071 (the "Property"). (C8, 17). The Property is situated upon Industrial Park Road, a public right-of-way, and is improved with a building that is used and occupied for industrial business. (C8, 17).

The City has a sewer main (the "Public Sewer") that is in the right-of-way immediately adjacent to the Property, running parallel with Industrial Park Road, and is within three hundred (300) feet from the property line of the Property. (C152, E2). At the time the Property was purchased by Aims, and continuing to this date, the Property has been serviced by a private sewage disposal system (the "Private System") and is not connected to the Public Sewer. (C9, 18).

### The Ordinance

When the Property was purchased by Aims in 2017, the City had a series of ordinances (collectively, the "Ordinance") prohibiting the disposal of sewage from any residence or place of business located within the City limits, other than through the sewer mains of the City, whenever the sewer mains of the City are adjacent to the property, except upon the written permission of the City council. (C56). The Ordinance consists of the following sections of the Rock Falls Municipal Code (the "Code") which were and continue to be in effect:

Section 32-186 of the Code states:

> "No person having his residence or place of business within the territorial limits of the city shall be permitted to dispose of sewage of such residence or place of business located in the city otherwise than through the sewer mains of the city whenever the sewer mains of the sewerage system of the city are adjacent to his property, without the written permission of the council."

Section 32-189(g) of the Code states:

> "Upon sale or transfer of property all private sewage disposal systems within the city limits shall connect to the public sanitary sewer when available in accordance with sections 32-186 and 32-190, a direct connection shall be made to the public sewer, and the private sewage disposal system shall be abandoned and shall be cleaned of sludge and filled with granular materials. The county health department shall be notified and inspect the abandoned septic system prior to any remedial actions being taken."

Section 32-190 of the Code states:

> "The owner of each house, building or property used for human occupancy, employment, recreation or any other purpose, situated within the city is required, at his expense, to install suitable toilet facilities therein, meeting the requirements of the state plumbing code, and to connect such facilities directly with the public wastewater treatment system in accordance with the provisions of this division, and within 60 days after official notice to so connect. This provision shall be effective provided that there a wastewater treatment system main located: (i) within 300 feet of the property line of a property utilized for residential purposes; (ii) within 300 feet of the property line of a property utilized for nonresidential purposes which has a daily sewage flow of less than 1,500 gallons per day; or, (iii) within 1,000 feet of the property line of a property utilized for nonresidential purposes which has a daily sewage flow of 1,500 gallons per day or greater."

Section 1-41(n) states:

> "Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief."

Following Aims' purchase of the Property, the City notified Aims that the Ordinance required it to abandon the Private System and connect to the Public Sewer. (C9,

18). Aims declined to connect, and continues to use the Private System without written permission (what is commonly referred to herein as a "waiver") from the City council. (C67, 73-74, 156).

**The Trial Court Proceedings**

On August 5, 2019, the City filed its Verified Petition for Injunctive and Other Relief against Aims (the "Petition") to enforce the Ordinance. (C8-10). The Petition requested the imposition of fines and an injunction that would require Aims to abandon the Private System and connect to the Public Sewer. (C8-10). On September 16, 2019, Aims filed its response ("Answer") to the City's Petition. (C17-20). The Answer asserted two affirmative defenses to the Petition: (i) first, that the City should be equitably estopped due to an alleged conversation with the City's building official who indicated that the Property was "grandfathered" in and would not have to connect to the Public Sewer; and (ii) second, that a connection to the Public Sewer was not available due to the absence of lateral hookups from the sewer main and due to the depth of the sewer main. (C18). On January 27, 2020, the City replied to the Answer and denied the Aims' affirmative defenses. (C29-33).

The City filed a Motion for Summary Judgment on September 10, 2020, requesting summary judgment as to all matters set forth in the Petition. (C38-110). On November 9, 2020, the trial court granted the Motion for Summary Judgment with respect to the issue of estoppel, but denied the Motion for Summary Judgment with respect to availability of a connection to the Public Sewer. (C5). In doing so, the trial court determined that a factual dispute existed as to whether a connection to the Public Sewer was "available" within the

meaning of the Ordinance. (C5). A bench trial was scheduled to take place on August 20, 2021. (C6).

Less than one week before trial, Aims requested written permission from the City council to continue the use of its Private System. (R133-134). The City council denied the request. (C74).

On August 20, 2021, the matter proceeded to a bench trial and on October 7, 2021, the trial court issued an oral pronouncement of its findings and rulings. (C6). In its oral pronouncement, the trial court made the following material findings of fact:

a. the Property is serviced by the Private System (C18; R105-106);

b. the Property is not connected to the sewerage system of the City (C18; R106);

c. the Public Sewer is located within 300 feet of the property line of the Property, which has a daily sewage flow of less than 1,500 gallons per day (R136-38); and

d. Aims has not been granted the City council's written permission to continue use of the Private System (R119).

Despite such findings, the trial court denied the Petition and granted judgment in favor of Aims. (C6, R129-152). In doing so, the trial court ruled upon equitable considerations, primarily focusing on the perceived hardship of compliance with the Ordinance and the City council's previous decision to grant a waiver of the Ordinance requirements to a different property owner. (R129-152). A written order incorporating the transcript of the trial court's decision was entered on February 16, 2022. (C303).

**The Appeal**

The City filed its Notice of Appeal on March 15, 2022, seeking review from the Fourth District. (C307). On appeal, the City alleged that the trial court erred when it (i) refused to grant the City's request for injunction following proof that a violation of the Ordinance occurred; (ii) applied a balance-of-hardships test and considered the cost of compliance as a factor in determining whether to grant injunctive relief; (iii) allowed evidence relating to a waiver that was provided to a different property owner within the City; and (iv) substituted its own discretion for that of the City council with regard to Aims' waiver request.

On October 31, 2022, the Fourth District issued a Rule 23 opinion which reversed the trial court and remanded the case for further proceedings. *City of Rock Falls v. Aims Industrial Services, LLC*, 2022 IL App (4th) 220208-U. The Fourth District held that the trial court erred by (i) misinterpreting the Ordinance when it considered additional factors, such as cost, in determining whether a connection to the Public Sewer was "available" within the plain language of the Ordinance; and (ii) refusing to grant an injunction following a demonstration that the Ordinance had been violated, where the Ordinance itself specifically allowed for injunctive relief. *Id*. ¶30; 39-50. Citing this Court's own precedent in *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264 (2003), the Fourth District held that once the City had demonstrated a violation of the Ordinance, the trial court had no discretion to consider equitable factors when determining whether to grant injunctive relief. *Id*. ¶50.

## COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the rule acknowledged in this Court's decision in *People ex rel. Sherman v. Cryns*, which dispenses with the traditional elements necessary to obtain an injunction upon demonstration of a statutory violation, applies to violations of a municipal ordinance.

2. Whether the judiciary retains discretion to deny injunctive relief following a demonstration that an ordinance has been violated, where the ordinance itself expressly authorizes injunctive relief.

## ARGUMENT

### I. This Court's Decision in Cryns Should Apply Equally to Statutes and Ordinances.

The crux of Aims' argument centers upon the applicability of the rule first acknowledged by this Court in *Sadat v. American Motors Corp*., 104 Ill.2d 105, 111-13 (1984), and later in *People ex rel. Sherman v. Cryns*, to municipal ordinances. 203 Ill.2d 264 (2003). In *Cryns*, this Court held that where "the State or a governmental agency is expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied" and that "once it has been established that a statute has been violated, no discretion is vested in the circuit court to refuse to grant the injunctive relief authorized by that statute." *Id*. at 277-278.

Aims does not appear to contest the Fourth District's ruling that the Ordinance had been violated and that Section 1-41(n) of the Code specifically authorizes injunctive relief. Rather, Aims questions the application of the above-cited *Cryns* holding to municipal ordinances. In so doing, Aims places significant weight upon this Court's use of the term

"statute," and suggests that municipal ordinances should be treated differently and therefore remain subject equitable review.

### A. Municipal Ordinances are Synonymous to Statutes within the Context of the *Cryns* Holding.

In *Cryns*, the issue involved an action by the State to enforce a violation of the Nursing and Advanced Practice Nursing Act (the "Act") against the defendant, a lay midwife who engaged in the practice of professional nursing and advanced practice nursing without a license. 203 Ill.2d 264, 267 (2003). As part of the proceedings, the State requested a preliminary injunction that would enjoin the defendant from engaging in conduct constituting the practice of nursing and midwifery until she complied with the licensing requirements of the Act. *Id*. at 268. At the time, Section 20-75(a) of the Act specifically authorized injunctive relief to prevent further violations of the Act. 225 ILCS 65/20-75(a).

The trial court denied the State's request for injunctive relief, but was reversed on appeal. *People ex rel. Sherman v. Cryns*, 327 Ill.App.3d 753 (2nd Dist. 2002). After a thorough review of the Act to determine that a violation had occurred, this Court affirmed the decision of the appellate court. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 297 (2003). In doing so, the Court acknowledged the longstanding rule that the "agency seeking the injunction need only show that the statute was violated and that the statute relied upon specifically allows injunctive relief." *Id*. at 277 (citing to *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill.App.3d 494, 504 (2nd Dist. 2003). Once it had been determined that the Act was violated, the trial court had no discretion to refuse to grant the injunctive relief authorized by the Act. *Id*. at 278; *People v. Keeven*, 68 Ill.App.3d 91, 97 (5th Dist. 1979).

It is true, as Aims suggests, that *Cryns* and the cases cited by it in support involve the enforcement of state statutes and not municipal ordinances. However, the distinction between a statute and an ordinance, for purposes of this narrow issue, is moot.

It is widely accepted by Illinois courts that municipal ordinances carry the same force and effect within the corporate limits of a municipality as a statute passed by the General Assembly itself. *Berry v. City of Chicago*, 320 Ill. 536 (1926); *City of Chicago v. Roman*, 184 Ill.2d 504 (1998); *Albert v. Board of Educ. Of City of Chicago*, 2014 IL App (1st) 123544 ¶43-44. An ordinance is a legislative act and is the equivalent of a municipal statute. *Namur v. Habitat Co.*, 294 Ill.App.3d 1007, 1013 (1st Dist. 1998); *American Country Insurance Co. v. Wilcoxon*, 127 Ill.2d 230, 243 (1989) (referring to an ordinance as a "municipal statute"). When under judicial review, ordinances are also interpreted using the same general rules of interpretation and construction as statutes. *In re Application of the County Collector*, 132 Ill.2d 64, 72 (1989). In other words, ordinances are the same as statutes, and are synonymous in nature, effect and enforcement. *Hamilton v. Baugh*, 335 Ill.App. 346 (4th Dist. 1948); *United States Brewing Co. v. Stoltenberg*, 211 Ill. 531 (1904).

This Court was faced with a similar distinction between a statute and an ordinance in *Landis v. Marc Realty, L.L.C.*, 235 Ill.2d 1 (2009). In *Landis*, the Court was tasked with interpreting the meaning of the phrase "statutory penalty" when considering the two (2) year statute of limitations under section 13-202 of the Code of Civil Procedure. 735 ILCS 5/13-202. At issue was whether a penalty imposed by a municipal ordinance was subject to the two (2) year limitation period on "statutory penalties". *Landis* at 6. The Court answered in the affirmative, and relied upon the common understanding of the word

"statute" by referring to sources such as case law and the dictionary. *Id*. 6-13. In its review, the Court found that in many instances there was no distinction between an ordinance and a statute. As a result, the Court interpreted the term according to its broadest understanding and determined that section 13-202's use of the word "statutory" encompasses municipal ordinances as well as state statutes. *Id*. at 11-12.

While the issues presented to this Court do not involve the interpretation of a statute, as in *Landis*, the same broad understanding should apply here. Like statutes, ordinances are enacted through acts of a legislative body – one that consists of elected officials that are held accountable to their constituents. *See, e.g., Gallik v. County of Lake*, 335 Ill.App.3d 325, 330 (2nd Dist. 2002) ("an action taken by a local legislative body is a legislative action"). Like statutes, when an ordinance is passed it has the force of law over the community in which it is adopted. *Hope v. City of Alton*, 214 Ill. 102, 105 (1905). Like statutes, ordinances are adopted for the purpose of protecting the public heath, safety and welfare. *See, e.g., Napleton v. Village of Hinsdale*, 229 Ill.2d 296 (2008).

The willingness of courts to issue an injunction to public bodies, at its core, is that harm to the public at large can be presumed from a violation of the regulatory scheme alone. *See, e.g., Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill.App.3d 494 (2nd Dist. 1993). Those same concerns exist with respect to the enforcement of municipal ordinances. In such an instance, whether it be the state or a municipality, the legislative body has already made a determination that the harm necessitates injunctive relief. *Sadat v. American Motors Corp.*, 104 Ill.2d 105, 113 (1984). If a municipality's right to an injunction were treated differently than that of a state agency, it would only permit further injury to the public, leaving a municipality with little to no ability to protect the health and

safety of their own constituents, and carries with it the potential to render municipal enforcement actions meaningless.

### B. Appellate Courts Have Consistently Applied the Rationale Cited in *Cryns* to Injunctions Authorized by a Municipal Ordinance.

Despite *Cryns*' analysis being constrained to the violation of a state statute, many appellate courts have extended that reasoning to municipal ordinance violations. *See, e.g, City of Waukegan v. Illinois E.P.A.*, 339 Ill.App.3d 963 (2nd Dist. 2003); *Village of Lake Bluff v. Jacobson,* 118 Ill.App.3d 102 (2nd Dist. 1983); *City of Highland Park v. County of Cook,* 37 Ill.App.3d 15 (2nd Dist. 1975); *City of North Chicago v. Pixley*, 28 Ill.App.3d 354 (2nd Dist. 1975); *County of Du Page v. Gavrilos*, 359 Ill.App.3d 629 (2nd Dist. 2005); *City of Chicago v. Piotrowski*, 215 Ill.App.3d 829 (1st Dist. 1991); *City of Chicago v. Krisjon Const. Co.*, 246 Ill.App.3d 950 (1st Dist. 1993).

To date, no court that has been tasked with the issuance of a statutory injunction, whether by state statute or an ordinance, has made any distinction between two. That lack of distinction ratchets in only one direction – that the rule dispensing with the traditional elements necessary to obtain an injunction applies to both statutes and municipal ordinances.

## II. When Specifically Authorized by Ordinance, Courts Have No Authority to Deny Injunctive Relief After a Municipality Has Demonstrated a Violation.

Aims argues that even if the rule acknowledged in *Cryns* applies to municipal ordinances, the trial court should still be permitted to balance the equities. Aims' Brief, pg. 14-16. In doing so, Aims recites the general rule that a party seeking an injunction must establish that it: (1) has no adequate remedy at law; (2) possesses a certain and clearly ascertainable right; and (3) will suffer irreparable harm if no relief is granted. *People v.*

*Keevan*, 68 Ill.App.3d 91, 96 (5th Dist. 1979). It also refers to the proposition that, generally, a trial court considering injunctive relief also balances the equities. *Oak Run Property Association, Inc. v. Basta*, 2019 IL App (3d) 180687 ¶62.

That analysis does not apply to government agencies that are seeking injunctive relief pursuant to statutory authority. *People v. Keeven*, 68 Ill.App.3d 91 (5th Dist. 1979). Where a government agency is expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 277-78 (2003). This Court itself has stated that once a violation has been established, the trial court no longer has the authority to refuse to grant the injunctive relief authorized by that statute. *Id*.

In its brief, Aims cites to a myriad of cases involving private parties that it suggests support its position that a court is empowered to balance the equities before issuing an injunction. *See, e.g., Oak Run Property Association, Inc. v. Basta*, 2019 IL App (3d) 180687 ¶62; *JL Properties Group B, LLC v. Pritzker*, 2021 IL App (3d) 200305 ¶58-60; *Granberg v. Didrickson*, 279 Ill.App.3d 886, 890 (1st Dist. 1996). While that may be the general rule for private disputes, none of the cases cited by Aims involve an injunction authorized by an ordinance or statute.

The very reason that courts treat statutory injunctions differently than a general request for injunctive relief is because, in such a circumstance, the legislative branch has already made a determination that the public would suffer irreparable harm and that injunctive relief is necessary to abate the violation. *See, e.g., People ex rel. Hartigan v. Stianos*, 131 Ill.App.3d 575, 580 (2nd Dist. 1985). In fact, harm to the public is presumed

by the violation of a statute or ordinance alone. *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill.App.3d 494, 504 (2nd Dist. 1993).

In this instance, the Ordinance is designed with the specific purpose of compelling property owners to abandon the use of private sanitary disposal systems and connect to the Public Sewer. The U.S. Supreme Court itself had stated long ago that "it is the commonest exercise of the police power of a state or city to provide for a system of sewers, and to compel property owners to connect therewith". *Hutchinson v. City of Valdosta*, 227 U.S. 303, 308 (1913); *City of Nokomis v. Sullivan*, 14 Ill.2d 417, 421 (1958). Because of the dangers to public health involved in the unsanitary disposition of human excrement, the power of municipalities to require property owners to discontinue the use of private sanitary disposal systems and connect with public sewer systems has been consistently upheld. *Id*. Clearly, then, any permitted violation of the Ordinance causes harm to the public at large.

Aims asserts that the dangers to public health are exaggerated because its Private System is more modern and that it is in good working order. Aims' Brief, pg. 13; 16. However, any private system within City limits remains a threat to the public, whether modernized or not, and whether functioning properly or not. *See, e.g., Houpt v. Stephenson County*, 63 Ill.App.3d 792 (2nd Dist. 1978) (requiring a connection to the public sewer system despite the existence of a private system in "perfect working order"). The benefit to the public health that is afforded by a public sewer system is lost unless all can be required to use it. *City of Nokomis v. Sullivan*, 14 Ill.2d 417, 422 (1958). Courts have acknowledged that it is not necessary for a municipality to wait until a danger to the public health exists before a connection to the public sewer may be required. *Id*. The mere fact

that Aims' Private System is not causing an active danger to the public does not relieve it from the requirement to connect.

Section 1-41(n) of the Code specifically authorizes the City to abate violations that are continuous with respect to time through "injunctive or other equitable relief." Aims has continuously failed to abandon its Private System and connect to the Public Sewer in violation of the Ordinance. As such, Section 1-41(n) of the Code authorizes the City to obtain injunctive relief. According to *Cryns*, having demonstrated a violation of the Ordinance and a specific statutory remedy for injunctive relief, the trial court had no discretion to refuse to grant the City's requested relief.

### A. The Appellant's Reliance on *Rosenwinkel* is Misplaced and is Contrary to this Court's Prior Rulings.

Aims cites to the Second District case of *County of Kendall v. Rosenwinkel* to suggest that a court should nevertheless "balance the equities," despite the existence of an ordinance expressly authorizing injunctive relief. 353 Ill.App.3d 529 (2nd Dist. 2004). By doing so, Aims attempts to insert an additional element into the analysis that has never existed – one that would by necessity require a court to balance the equities each and every time a statutory injunction is sought by a governmental agency. Such a requirement would completely erode the precedent established by this Court in *Cryns*. In the instant case, the Fourth District declined to adopt the position of the *Rosenwinkel* court, and instead relied upon this Court's ruling set forth in *Cryns*. *City of Rock Falls v. Aims Industrial Services, LLC*, 2022 IL App (4th) 220208-U ¶49. The City would urge this Court to continue to follow the precedent that has governed statutory enforcement proceedings for decades.

In *Rosenwinkel*, the County of Kendall ("County") filed suit against the defendant property owners for alleged zoning violations resulting from the construction of a grain bin that was located too close to a roadway. 353 Ill.App.3d 529, 532 (2nd Dist. 2004). The County requested fines and an injunction requiring the defendants to relocate the grain bin. *Id*. The trial court ruled in favor of the County, and entered an order requiring the defendants to remove the grain bin and enjoining them from further violations of the County's zoning ordinance. *Id*. at 537-538. Among other things on appeal, the defendants argued that the County should not have been granted an injunction as it had failed to prove an ascertainable right, an irreparable injury, and the inadequacy of a remedy at law. *Id*. 538-539.

In examining whether an injunction should have issued, the *Rosenwinkel* court acknowledged the *Cryns* ruling, which dispenses with the traditional equitable elements necessary to obtain an injunction, and further held that "the State or governmental agency need show only that a statute was violated and that the statute relied upon specifically allows relief." *Id*. at 539. However, it then cited to *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill.App.3d 494, 504 (2nd Dist. 1993), for the proposition that even where a statute has been violated and specifically authorizes injunctive relief, a balancing of the equities is still "permissible." *Id*. at 539-540. In reliance upon *Midland*, the *Rosenwinkel* court reversed the trial court's issuance of an injunction and remanded with instructions to weigh the equities. *Id.* at 541.

It is notable that the *Rosenwinkel* court relied almost entirely on cases involving disputes between private parties, not enforcement actions by a unit of government. In fact, the only municipal case relied upon in the relevant portion of *Rosenwinkel* is *Midland* itself.

*See Rosenwinkel*, 353 Ill.App.3d at 539 (citing *Midland*, 226 Ill.App.3d at 505). However, as indicated by the Fourth District, a careful review of the *Midland* case shows that it actually contradicts the idea that a balancing of the equities should take place before a court enjoins a violation of a municipal ordinance.

In *Midland*, the Second District considered whether the trial court had erred in denying the government statutory injunctive relief concerning three construction projects that the government alleged had encroached on setbacks. 226 Ill.App.3d at 496-500. Regarding one of the projects, the *Midland* court held that the trial court lacked jurisdiction to deny injunctive relief based on review of a permit, as the plaintiff failed to exhaust its administrative remedies. *Id*. at 502. As to the second project, the *Midland* court ruled that the trial court erred by applying general equitable principles in refusing to issue a statutory injunction that was specifically authorized by the Rivers Act (615 ILCS 5/4.9 et. seq.). *Id.* at 505. Regarding the third project, the *Midland* court held that denial of the statutory injunction was still appropriate, but only due to the extraordinary facts of the case pursuant to the doctrine of laches. *Id*. at 506. The three holdings of *Midland* did not open the door for a trial court to generally balance the equities before issuing a statutory injunction. In fact, its second holding was to the contrary. The *Midland* rulings, therefore, are consistent with this Court's precedent.

The *Rosenwinkel* decision is alone in its interpretation of the *Cryns* ruling. Despite Aims' efforts to claim otherwise, the *Rosenwinkel* decision is in conflict with valid precedent established by this Court. The *Cryns* ruling is clear – where a government agency is expressly authorized by statute to seek injunctive relief, and it has been established that the statute was violated, no discretion is vested in the circuit court to refuse

to grant the injunctive relief authorized by that statute. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 277-78 (2003). As it relates to a trial court's authority to deny injunctive relief under such circumstances, the *Cryns* ruling left no room for interpretation. So clear is the *Cryns* ruling that the Fourth District has cited to it as "unequivocal", and has even gone so far as to specifically abrogate any of its previous rulings supporting the notion that a trial court has discretion to deny relief. *People ex. rel. Madigan v. Petco Petroleum Corp.*, 363 Ill.App.3d 613, 627-628 (4th Dist. 2006). The *Rosenwinkel* court ignored this Court's unequivocal precedent, and its erroneous decision should not alter the outcome of this case.

### B. Denial of Relief Expressly Authorized by the Ordinance would Infringe Upon Constitutional Separations of Power.

If this Court were to adopt the *Rosenwinkel* court's position that a court may nevertheless balance the equities despite the fact that a legislative body has specifically authorized injunctive relief as a remedy upon violation, it would risk treading upon constitutional separations of power. Based on the fact that *Rosenwinkel* made no distinction between state statutes and municipal ordinances in its holding, such a ruling would impact enforcement actions not just by municipalities, but by state agencies as well.

The Illinois Constitution provides that the legislature, executive and judicial branches are separate. Ill. Const. 1970, art. II, §1. No branch shall exercise powers properly belonging to another. *Id.*

In this instance, the Ordinance has been lawfully enacted by the duly elected officials of the City. In its legislative capacity, the City council made the determination that violations of the Code which are continuous with respect to time may be abated by injunctive relief. That legislative direction is embedded within Section 1-41(n) of the

Code. Upon the occurrence of a continued violation of the Ordinance, as here, the City council has determined that the imposition of mere fines alone are insufficient to address the dangers to the public at large, and that an injunction is the appropriate remedy.

The holding in *Rosenwinkel* gives no deference to legislatures to determine the remedies that are appropriate upon violation of a statute. *Rosenwinkel,* in essence, stands for the proposition that even if a legislative body has expressly provided for injunctive relief following a statutory violation, the courts are still empowered to deny relief under principles of equity. Such a holding cannot and should not be the law. To deem otherwise would permit the judiciary to determine public policy and opine as to whether or not a particular regulatory scheme is fair or otherwise in the best interests of the public. It is sufficient to state that decisions relating to public policy are squarely within the realm of the legislature. *Morris v. William L. Dawson Nursing Center, Inc.*, 187 Ill.2d 494, 499 (1999). This Court should be wary of inadvertently permitting courts to step within the realm of the legislature. *See, e.g., Coleman v. East Joliet Fire Protection Dist.*, 2016 IL 117952 ¶59 (2016) (quoting *Dixon Distributing Co. v. Hanover Insurance Co.*, 244 Ill.App.3d 837 (5th Dist. 1993) ("Courts are ill equipped to determine what the public policy should be. *** Further, establishing public policy may entail the balancing of political interests. This is a function of the legislature, not the courts.").

As opposed to *Rosenwinkel*, the underlying rationale in *Cryns* actually supports, rather than detracts from, the idea of constitutional separations of power. Under the *Cryns* analysis, only statutes that expressly provide for injunctive relief may usurp the traditional equitable pleading requirements. 203 Ill.2d at 277-278. Generalized provisions authorizing equitable relief do not receive the same privilege. *Sadat v. American Motors Corp*., 104

Ill.2d 105, 112-113 (1984). The differential treatment toward statutes that expressly provide for injunctive relief is that they do so on behalf of a public official in his or her capacity as enforcer of a regulatory scheme. *Id.* In other words, the legislature has made the specific policy determination that injunctive relief is necessary to rectify the harms caused to the public by a violation. It is for the legislative branch of the government, not the judicial branch, to determine when and where conditions exist requiring an exercise of the police power to meet existing evils. *See, e.g., County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill.2d 546 (1999); *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill.2d 357, 364 (1985) ("the legislature has broad discretion to determine not only what the public interest and welfare require, but to determine the measures needed to secure such interest."). Courts that refuse to grant an injunction specifically authorized by statute would be engaged in policy-making and would invariably replace by judicial fiat the legislature's decision as to what harms necessitate abatement by injunction.

Section 1-41(n) of the Code is not silent as to the type of equitable relief available or the conditions under which it is appropriate. Pursuant to Section 1-41(n), the City has specifically identified injunctive relief as a remedy and sets forth the conditions under which it is appropriate – when violations are continuous over time. As in *Cryns*, and now in the instant case, the legislature has determined the specific remedies available following the demonstration of a statutory violation. If courts were allowed to deny injunctive relief given such facts, it would be tantamount to a refusal to enforce the law.

Even if a trial court is bound to issue statutory injunctive relief following proof of a violation, that is not to say that it has been completely removed of its ability to determine the scope and extent of the injunction. *See, e.g., People v. Smith*, 2012 IL App (1st) 113591

¶24 ("Generally, an injunction should be reasonable and should be only as broad as is essential to safeguard the rights at issue"). Indeed, if there are certain aspects of an injunction that are not mandated by the statute at issue, such as time periods or alternative methods for compliance, then the trial court remains vested with some authority to tailor the injunctive relief to more effectively address the concerns at issue. Statutes that only provide for general equitable remedies also remain subject to the traditional equitable pleading requirements. *People ex rel. Hartigan v. Stianos*, 131 Ill.App.3d 575, 580 (2nd Dist. 1985). Finally, the limitation on a trial court's discretion to issue an injunction in any of the above circumstances will not preclude appellate review. *See, e.g., Roxana Community Unit School Dist. No. 1 v. WRB Refining, LP*, 2012 IL App (4th) 120331 ¶27.

### C. Reversal Would Jeopardize Governmental Enforcement Efforts Statewide.

Allowing trial courts to balance the equities even where the legislature has expressly provided for injunctive relief would upend statutory enforcement measures by governmental agencies across the entirety of this state.

Aims asserts that the issuance of an injunction in this instance would force it to abandon the Private System and incur anywhere from $51,455.00 to $157,010.45 in costs of connecting to the Public Sewer. Based upon the cost and other factors such as the depth of the sewer main and absence of lateral connections, Aims concludes that it would incur a hardship sufficient to warrant denial of the City's request for injunctive relief. The underlying rationale of the *Cryns* decision proves why such an argument cannot prevail.

In *Cryns*, and in all other cases that follow it, the primary concern of the governmental agency when it seeks the issuance of an injunction is the protection of the public health and safety. The very existence of laws are to safeguard the public interests.

If a governmental body has made the specific determination that certain conduct threatens the public, and that an injunction is specifically warranted in order to preserve the public health and safety, then any hardship on the violator should be disregarded. This stands in stark contrast to a statute providing for general equitable remedies – in such an instance, no legislative determination has been made that damage will or is likely to result from the action sought to be enjoined. *See, e.g., People v. Keeven*, 68 Ill.App.3d 91, 96-97 (5th Dist. 1979). By virtue of passing a law specifically providing for injunctive relief, the governmental body has already "weighed the equities" and concluded that the public interests outweigh any detrimental effects to the individual. To deem otherwise would place the interests of the individual over that of the public, and would make enforcement by governmental agencies cumbersome and illogical.

Should courts begin to weigh the equities each and every time that a statutory injunction is requested by a governmental body to enforce its regulations, in many circumstances the government may not be able to obtain relief. Statutes may be violated by people of all classes, whether rich or poor, young or old, or any other of a multitude of characteristics. Were a court to refuse statutory injunctive relief based upon the perceived hardships to the violator, the very purpose of the legislature in enacting the regulation would be nullified. The most permissive waiver granted by the courts in one case would then become the *de facto* standard to apply in other cases. In turn, a governmental agency's ability to prevent and abate specific harms to the public through injunctive relief, it's primary tool of enforcement, would become so eroded as to render it moot. This Court should not adopt such a detrimental interpretation of the law.

## CONCLUSION

For all of the foregoing reasons, the City respectfully requests that this Honorable Court affirm the decision of the Fourth District, and enter judgment in favor of the City and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

CITY OF ROCK FALLS,
an Illinois municipal corporation,
Respondent-Appellee

*/s/ Matthew D. Cole*
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## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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), contains 21 pages.

*/s/ Matthew D. Cole*
Matthew D. Cole

**NOTICE OF FILING and PROOF OF SERVICE**

In the Supreme Court of Illinois

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|---|---|---|
| CITY OF ROCK FALLS, an Illinois municipal corporation,<br><br>*Appellee*,<br><br>v.<br><br>AIMS INDUSTRIAL SERVICES, LLC, an Illinois limited liability company,<br><br>*Petitioner*. | ) | No. 129164 |

The undersigned, being first duly sworn, deposes and states that on April 5, 2023, the Brief of Appellee was electronically filed and served upon the Clerk of the above court. On April 5, 2023, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

*/s/ Matthew D. Cole*
Matthew D. Cole

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

*/s/ Matthew D. Cole*
Matthew D. Cole