No. 116054 ORIGINAL

In the

Supreme Court of Illinois

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

Plaintiffs-Petitioners,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant-Respondent.

Petition for Leave to 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.

PETITION FOR LEAVE TO APPEAL

DEREK Y. BRANDT
PATRICK J. KEATING
SIMMONS BROWDER GIANARIS ANGELIDES & BARNERD LLC
230 West Monroe Street, Suite 2221
Chicago, Illinois 60606
(312) 759-7518

ANDREA BIERSTEIN
HANLY CONROY BIERSTEIN SHERIDAN FISHER & HAYES LLP
112 Madison Avenue
New York, New York 10016
(212) 784-6400

Attorneys for Plaintiffs-Petitioners

ORAL ARGUMENT REQUESTED IF PETITION IS ALLOWED

COUNSEL PRESS · (866) 703-9373 PRINTED ON RECYCLED PAPER

No.

In the

Supreme Court of Illinois

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

Plaintiffs-Petitioners,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant-Respondent.

Petition for Leave to 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.

PETITION FOR LEAVE TO APPEAL

PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 315, Plaintiffs-Appellants respectfully petition for leave to appeal to this Court from the decision of the Appellate Court dated January 24, 2013.[1]

JURISDICTION

The Appellate Court issued its Order on January 24, 2013. Appellants filed a timely Petition for Rehearing on February 14, 2013. On April 8, 2013, after briefing, the Appellate Court issued its Order denying rehearing.

POINTS RELIED UPON IN SEEKING REVIEW

This case presents important questions concerning the uniform statewide enforcement of vehicle and traffic regulations, the scope of Home Rule authority, and the meaning of the provision of the Illinois constitution prohibiting "local" legislation. Despite at least three legislative pronouncements regarding the importance of uniformity in the enforcement of the Illinois Rules of the Road, and in particular, in the enforcement of traffic regulations governing the movement of vehicles, the Appellate Court, First District held that a municipality may, under its Home Rule authority, adopt its own non-uniform administrative procedures for the enforcement of rules prohibiting a vehicle from crossing an intersection against a red light. In this case it upheld a 2003 ordinance enacted by Defendant City of Chicago purporting to authorize the use of so-called "red-light cameras" to take pictures of such violations, and further purporting to authorize administrative, rather than court, proceedings to adjudicate these violations. The Appellate Court also held that a 2006 statute (the "Enabling Act") purporting to grant the

[1] The January 24, 2013 Order is included in the Appendix to Petition for Leave ("APL") at pp. 1-34.

authority to enact such "red-light camera" ("RLC") ordinances – which Chicago claimed retroactively authorized its RLC program -- was not unconstitutional local legislation, even though it applied only to municipalities in just eight specifically named counties, but to no others, no matter how similarly situated. The record is clear that this limitation was added in order to secure the votes of legislators who did not want the statute to apply in their own counties, but were willing to vote for it so long as their counties were excluded. Both of these rulings are at odds with existing precedent and raise important questions.

This Court should grant leave to appeal the Appellate Court's finding that home rule units are free to adopt alternative traffic enforcement schemes like Chicago's RLC for two reasons. *First*, the issue is of general importance because the Appellate Court's ruling destroys Illinois' venerable uniform system for the enforcement of the rules of the road, and defies the principle that the legislature may limit the concurrent exercise of home rule powers. The Court below, in effect, sanctioned two competing systems of traffic law enforcement, the uniform statutory system in effect for decades, and a patchwork system of municipal ordinances that regulate traffic movement and penalize violations, as municipal authorities see fit. The Appellate Court's improperly narrow read of the uniformity and preemption clauses in the Vehicle and Municipal Codes rendered much of the Vehicle Code (including the Enabling Act) superfluous, and gutted the ability of the Secretary of State to keep dangerous drivers off the road.

Second, the Appellate Court's finding that Chicago's 2003 RLC ordinance was valid under Chicago's Home Rule powers is without precedent. The judgment conflicts with (a) the plain language of the Vehicle and Municipal Codes, *see* 625 ILCS 5/11-207, 625 ILCS 5/11-208.1, 625 ILCS 5/11-208.2, and 65 ILCS 5/1-2.1-2; (b) the formal Opinion of the Illinois Attorney General, *see* Op. Att'y. Gen. No. 92-013, 1-2 (June 22,

1992); (c) an opinion from the Second District, recognizing the requirements of uniformity and the limitations of Home Rule authority with respect to the specific provisions of the Vehicle Code at issue, *see Vill. of Mundelein v. Franco*, 317 Ill. App. 3d 512, 519 (2nd Dist. 2000); and (d) two of the First District's own prior opinions, *Catom Trucking, Inc. v. City of Chicago*, 2011 IL App (1st) 101146; *People ex rel. Ryan v. Vill. of Hanover Park*, 311 Ill. App. 3d 515, 527–28 (1st Dist. 1999).

This Court should similarly grant review of the Appellate Court's ruling that the Enabling Act is constitutional, again for two reasons. *First,* the ruling presents an opportunity for this Court to address, for the first time, the meaning of the "local" legislation ban. The Illinois constitution prohibits both "local" and "special" legislation. Although there has been substantial jurisprudence on the meaning of the "special" legislation ban, no court has addressed the distinct meaning of the prohibition on "local" legislation. The Appellate Court mechanically applied to the facially "local" law at issue here the analytic test used for "special" legislation, without consideration of whether that test was appropriate. It was not. Indeed, the use of this test for "local" legislation undermines the plain meaning of the prohibition, rendering it entirely toothless. This Court should grant review to take the opportunity to consider the proper test for laws challenged as "local" under the 1970 Constitution. This is an issue of first impression.

Second, even without consideration of the proper test to be applied, the Appellate Court's ruling flatly contradicts two decisions of this Court: *In re Belmont Fire Prot. Dist.*, 111 Ill 2d 373, (1986), and *In re Pe.t of Vill. of Vernon Hills*, 168 Ill. 2d 117 (1995) which clarified and reaffirmed the rule that laws that purport to apply to some Illinois municipalities, but not to others, on the sole basis of the county in which the municipality happens to lie, are unconstitutional. To validly distinguish municipalities, a legislative

classification "should be based on either the population, urbanization, or density of the municipality involved," and not any characteristic "of the county in which the municipality lies." *In re Belmont,* 111 Ill. 2d at 385. The Appellate Court never even considered whether the classification of municipalities, by the county in which they happen to lie, aligned to any rational purposes of the Enabling Act. Because the law treats similarly situated municipalities in completely different ways, and operates essentially at random with respect to municipal size, congestion, and situation, it fails even under the deferential test used for "special" (rather than "local") legislation.

STATEMENT OF FACTS

In 2003, the Chicago City Council adopted an ordinance (the "Ordinance" or "RLC ordinance" that created an "Automated Red Light Camera Program" ("RLC Program" or the "Program"). Chicago Municipal Code ("CMC") Ch. 9-102, § 010, *et seq.* Although the rules governing the movement of motor vehicles faced with a steady red traffic signal are among the "Rules of the Road" set forth in Chapter 11 of the Illinois Vehicle Code, Chicago has incorporated these rules into its own municipal ordinances. *See* Chicago Code Ch. 9-8, § 202(c)(1)-(2) (governing red light violations); Ch. 9-16, § 030 (governing right turns on red). The RLC Program purports to enforce Chicago's red-light ordinances, but its enforcement scheme is completely at odds with the uniform, state-wide enforcement scheme prescribed by the Vehicle Code.

Under the Vehicle Code, red light violations are enforced by police officers. 625 ILCS 5/16-101. Traffic prosecutions are initiated by the preparation of a Uniform Citation, 725 ILCS 5/11-3, which is required to be transmitted to and adjudicated in the Circuit Courts. Ill. Sup. Ct . Rule 552. Convictions of Traffic Offenses are to be reported

to the Secretary of State, 625 ILCS 5/6-204, who can suspend the licenses of repeat offenders.

Under Chicago's Program, by contrast, an automated system detects and video-records the alleged violations and photographs the vehicle's license plate. Chicago's Department of Revenue issues the registered owner a "Red Light Violation" notice. The violations are considered civil and adjudicated by the City's Department of Administrative hearings. The owner of the vehicle, rather than the driver, is deemed responsible for the red-light violation, and no attempt is made to determine who was actually driving the vehicle at the time of the violation. Convictions are not reported to the Secretary of State.

In 2005 a bill authorizing municipalities statewide to enact RLC ordinances, was introduced in the 94th General Assembly but was defeated in the state senate, 25-29. (C278). Thereafter, a similar bill, H.B. 4835, was submitted. It differed from its predecessor in one key respect: the later bill contained a new subsection limiting the applicability of the legislation:

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

The bill's Senate sponsor conceded that the bill was limited at the request of members in the Transportation Committee who "didn't want to have this option in their counties," and so the bill was limited to what the sponsor described as "the more populous counties." (C523, 605.) Winnebago County is not named in the Enabling Act. It is more populous and has almost 50% more registered vehicles per square mile than St. Clair County. (C279)

The bill was then submitted for a Senate vote and passed with a two-vote margin. (C278) It took effect as Public Act 94-795, on May 22, 2006. (*See* A38.) The Enabling Act did not contain language of retroactive application; ("This bill takes effect upon becoming law.") (C185). Chicago has not repealed, re-adopted, or re-enacted its 2003 red-light camera ordinance after the effective date of the Enabling Act, and has not adopted a new ordinance on this topic. (C475–78)

Plaintiffs are vehicle owners and motorists who received $100 red light camera violation notices under the Program. They brought this action in equity against the City of Chicago, challenging Chicago's legal authority to adopt its 2003 Ordinance and operate its RLC Program, and challenging the constitutionality of the 2006 Enabling Act.[2] The Appellate Court rejected the City's claims that the vehicle owners who were issued violation notices lacked standing to challenge the city's legal authority (Order ¶19, APL 7) The Court also found that the coercive measures taken to ensure payment on violation notices vitiated the City's defense under the "voluntary payment" doctrine. (Order ¶78, APL 33-34))

ARGUMENT

I. THIS COURT SHOULD REVIEW THE APPELLATE COURT'S ERRONEOUS CONSTRUCTION OF CHICAGO'S HOME RULE AUTHORITY

A. The Construction of Home Rule Authority Is a Question of General Importance Requiring Statewide Uniformity

This Court should grant review in order to consider the scope of Home Rule authority in the context of traffic enforcement. Review is especially important because of

---

[2] In the Appellate Court, Plaintiffs also argued that, even if the Enabling Law was constitutional, Chicago's failure to re-enact or re-adopt a red-light camera program after the passage of the statute meant that its RLC Program, void *ab initio,* was not revived. The Court ruled that Plaintiffs had waived this argument (APL 8)

the legislature's repeated emphasis, in both the Vehicle Code and the Municipal Code, on the need for statewide uniformity in such enforcement. Uniformity is served neither by the ruling of the Appellate Court permitting Home Rule units to enact divergent enforcement schemes, nor by the now-divergent interpretations of the scope of Home Rule authority in the Appellate Courts.

The legislature has clearly and consistently required that the Rules of the Road in Chapter 11 must be enforced uniformly and consistently by every unit of local government in Illinois. Chapter 11 of the Illinois Vehicle Code, 625 ILCS 5/100 *et seq.* (the "Vehicle Code" or "Code") contains not one but two uniformity provisions, backstopped by an express limitation on home rule power. In relevant part, the Code requires:

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

625 ILCS 5/11-207.

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

625 ILCS 5/11-208.1. Home rule authority is then expressly preempted:

> The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to

> Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act[3].

625 ILCS 5/11-208.2.[4] The Illinois Municipal Code reinforces this uniformity: it allows Home Rule units to adopt their own systems to adjudicate ordinance violations, but instructs that such systems *may not* be used for traffic violations:

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

65 ILCS 5/1-2.1.2. (emphasis added)

The Appellate Court's Order undermines this comprehensive uniformity; it has now permitted just what for decades the legislature sought to prevent: competing, divergent systems of traffic law enforcement. If, as the Appellate Court has now held, alternative programs for detecting and municipally prosecuting vehicles that run red lights, are not proscribed as "traffic regulation[s] governing the movement of vehicles," then it is very hard to imagine what divergent ordinances are banned by the uniformity provisions of the Vehicle Code and the Municipal Code.

The issue is one of general importance and statewide uniformity. There are actually two issues of uniformity here, one having to do with uniform *enforcement* of traffic regulations, the other having to do with uniform *construction* of the uniformity and

---

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

[4] Because the Vehicle Code's proscription on entering an intersection in the face of a steady red signal is found in 625 ILCS 5/11-306, there is no doubt that it is a provision of "this Chapter" within the meaning of Sections 11-207, 11-208.1, and 11-208.2, and is subject to uniform enforcement statewide.

preemption provisions themselves. Resolution of both is required to ensure that the Vehicle Code, the Municipal Code and the scope of Home Rule powers are not construed differently in different parts of the State. By their very nature, such issues should be decided by this Court to ensure uniformity and consistency in the interpretation of the Vehicle Code and the Municipal Code

B. The Order Below Conflicts with Every Other Authority to Have Considered the Issue

The Appellate Court decision also conflicts with a decision of the Appellate Court, Second District, a formal Opinion of the attorney general, and two of the First District's own opinions.

In *Vill. of Mundelein v. Franco*, 317 Ill. App. 3d 512,519 (2nd Dist. 2000), the Second District considered whether the uniformity provisions of Chapter 11 apply to regulations set forth in Chapter 12 of the Vehicle Code. Although the Second District found they did not, in reaching its conclusion, the court re-affirmed the limits on Home Rule authority with respect to regulations found in Chapter 11. As noted, *see supra* note 4, the Vehicle Code regulation concerning the movement of vehicles in the face of a steady red signal is found within Chapter 11, specifically in Section 11-306. The opinion of the Appellate Court in this case cannot be squared with the decision of the Second District in *Village of Mundelein*, and this Court should resolve this conflict between the districts.

Similarly, in 1992, the Illinois Attorney General determined that municipal ordinances allowing for "alternative" civil enforcement of traffic violations outside of the Vehicle Code are "void and unenforceable . . . conflict with the comprehensive traffic regulation and enforcement policy set forth in the Illinois Vehicle Code and the Supreme

Court Rules on bail in traffic cases, and deny due process of law." Op. Att'y. Gen. No. 92-013, 1-2 (June 22, 1992).

Finally, the Appellate Court's order conflicts with its own precedents. In *People ex rel Ryan v. Vill. of Hanover Park*, 311 Ill. App. 3d 515 (1st Dist. 1999) the Illinois Secretary of State filed a *quo warranto* action against several municipalities, including home rule units, which had adopted ordinances that provided for "P Tickets," civil violation notices issued by the municipality pursuant to ordinance, by which motorists who violated traffic rules could avoid the Uniform Citation procedures by paying a fine directly to the municipality; such violations were not adjudicated in the circuit courts and dispositions were not reported to the Secretary of State.

Hanover Park held that "[u]nder Chapter 11 of the [Vehicle] Code, home-rule designation does not enhance a municipality's ability to enact ordinances on the same subjects." *Hanover Park*, 311 Ill. App. 3d at 525. Because the "P-ticket" ordinances, like Chicago's RLC ordinance, bypassed both Circuit Court adjudication and Secretary of State reporting, "[t]he lack of uniformity and consistency between the ordinances and the [Vehicle] Code is patent." *Id.* at 527. When alternative enforcement schemes do not result in the reporting of violations to the Secretary of State, his ability to keep dangerous drivers off the streets, and the safety of the public roads, is reduced. [5]

The First District's Order here similarly conflicts with its recent Opinion in *Catom Trucking Inc. v City of Chicago*, 2011 Ill App (1st) 101146. Plaintiff Catom

[5] In *Hanover Park* the court noted that the then-new Municipal Code's proscription on municipal ordinances was even broader than the Vehicle Code's uniformity requirements: the latter barred only alternative enforcement of Chapter 11, but the Municipal Code disallowed municipal adjudication of "any offense" under the Vehicle Code and any ordinances regulating vehicle movement. 311 Ill. App. 3d at 533

Trucking challenged Chicago's alternative enforcement scheme for regulating overweight trucks. Like the 2003 RLC Ordinance, the law challenged in *Catom*: 1) prohibited on a municipal level conduct already prohibited in the Vehicle Code; 2) contained a method of violation detection different than that in a Uniform Citation case (use of non-police city employees to pull over and weigh trucks); and 3) bypassed Circuit Court adjudication and Secretary of State reporting, in favor of administrative hearings and municipal-level collection of civil penalties. The Appellate Court considered whether Chicago had jurisdiction to adjudicate the violation in its Department of Administrative Hearings. Because the Illinois Municipal Code expressly prohibited home rule units from administratively adjudicating as municipal offenses "any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles," and because it found that ordinances prohibiting the "operation" of an overweight truck on city streets "are clearly traffic regulations governing the movement of vehicles," the City lacked jurisdiction to adjudicate such a violation. *Id.* at ¶18. The Appellate Court purported to find space between this case and *Catom* because that ordinance "penalized a failure to stop, again a moving violation." Order ¶42 (APL 16). The Appellate Court also conducted its home rule analysis of the 2003Ordinanceas if the Enabling Act was already in effect. *See* Order ¶41 (APL15)(use of past tense in considering application of 2006 Act to the 2003 Ordinance). This Court should grant review in order to harmonize the various decisions concerning the extent Home Rule authority in the context of traffic enforcement.

II. THIS COURT SHOULD REVIEW THE APPELLATE COURT'S ERRONEOUS RULING CONCERNING THE CONSTITUTIONALITY OF THE 2006 ENABLING LAW

A. The Appellate Court Failed to Apply the Constitutional Test, and its Ruling was premised on Principles that are Irreconcilable with the Language and Intent of the Constitution

Because the Enabling Act is a facially local law that could easily have been made general,[6] basic principles of statutory construction and constitutional interpretation should compel a court to apply Section 13's plainly worded test, and strike down the Enabling Act. But the Appellate Court did not subject the enabling to Section 13's required test: whether the law (which was undisputedly "local") could have been made general:

> 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.

The Enabling Act is a hybrid that represents a new frontier in legislative attempts to pass local legislation: it eschews true legislative classification and instead simply names the geographical subdivisions to which it applies. It then adds to this rarely attempted feature a further object: the law applies to *all* municipalities in the favored counties, however situated, but to *no others*. This Court should grant review to determine if the concept of unconstitutional local legislation still exists.

1. Historical Basis of the Present Ban on Local Legislation

In the 19th century local and special legislation (sometimes known as private bills) caused problems that seriously interfered with effective state government. *See* Robert M. Ireland, *The Problem of Local, Private, and Special Legislation in the*

---

[6] The Enabling Act, like most enabling laws, is especially amenable to general application because it impose no costs on areas or units of government that truly "don't want" red light cameras: Counties and municipalities are of course not required to adopt RLC ordinances.

Nineteenth-Century United States, 46 AM. J. LEGAL HIST. 271, 271 (2004) (hereinafter "Ireland') The Illinois Constitutional Convention of 1870 was called in part to remedy this specific problem. Ireland at 295, George R. Braden & Rubin G. Cohn, Ill. Constitutional Study Comm'n, *The Ill. Constitution: An Annotated & Comparative Analysis* at 204 (Univ. of Ill. Inst. of Gov't and Pub. Affairs (1969).[7] ("By the time the 1870 Convention met, the problem of special and local legislation had become alarming.") The final product did ban such laws, *see* Ill. Const. of 1870, art. IV, § 22 ("Section 22")

As the "single subject" rule prevents logrolling, so does the ban on local legislation, properly understood, prevent the passage of laws made local because they cannot be passed when general. Unless local legislation is banned, the proponent of an unpopular or undesirable bill can enact it by simply limiting localities in which it applies until a majority of legislators does not object, each assured that as a matter of legislative "courtesy," they will receive votes for their own local and special bills, no matter how bad or unpopular. Ireland at 273–74; Braden at 207 (APL 43)("Under such a system [permitting local legislation], legislators are normally interested only in their own private bills, and passage is relatively easy.")

Section 22 spawned a hundred years of court challenges to laws both special and local, with the result that the 1870 Constitution reduced, but did not eliminate, local and special legislation. Then as now, court decisions were maddeningly inconsistent; Braden

---

[7] This treatise, (hereafter "Braden" or "Braden & Cohn,") was commissioned by the Illinois Constitutional Study Commission as part of the preparations for the 1970 Constitutional Convention. Relevant portions are reproduced for the Court's convenience at APL 36-62

& Cohn characterized the case law that developed around the original ban as, simply, "a mess." *Id.* at 225,(APL 43). After intensive analysis they identified a number of problems with the ban as implemented in the 1870 Constitution. First, Article 22 contained a "laundry list" of 23 enumerated areas in which "[t]he General Assembly shall not pass local or special laws," followed by a catch-all clause: "In all other cases where a general law can be made applicable, no special law shall be enacted." Second, Article 22 made no provision for judicial review, and was contained in Article IV of the Constitution, which governed the legislature. These two features understandably shaped judicial deference: "if the legislature passes a local or special law not otherwise prohibited [by enumeration], the courts consider such passage a conclusive and unreviewable finding by the legislature that a general law cannot be made applicable. *Id.* at 222, (APL 58) (citing *Wilson v. Bd of Trustees*, 133 Ill. 443 (1890).)

Two other features of the 1870 Constitution also shaped a body of case law marked by inconsistency and judicial deference. First, the 1870 Constitution did not contain any due process or equal protection clauses, and in such a vacuum, Article 22 became "in effect, Illinois' version of the Fourteenth Amendment's equal protection clause," *Id.* at 221,(APL 57) with the peculiar result that even today, as the Appellate Court below concluded, " a claim that an enactment is special legislation is generally judged by the same standard that applies to review of an equal protection challenge." (Order ¶52, APL 19) This imported that deferential standard into a part of the completely different field of law. Finally, the 1870 Constitution embraced Dillon's Rule and recognized no home rule authority. Even the largest municipalities lacked the general power to legislate solutions to their own unique problem, which required the legislature to sometimes do so, abetted a certain judicial flexibility when such laws were challenged.

Braden and Cohn realized that fully eradicating local and special legislation would require that the new Illinois Constitution contain four features lacking in the 1870 Constitution: 1) replacement of the Section 22 "laundry list" of banned subjects with a clear, general prohibition; 2) a clear statement of judicial power to enforce the ban; 3) discrete due process and equal protection guarantees; and 4) a separate provision addressing and expanding the powers of local governments. Braden at 224–26, (APL 60-62) The 1970 Constitutional Convention eventually adopted as Article IV, Section 13 the wording recommended by Braden & Cohn (that of the Sixth Model State Constitution).

2. The Intent of both the 1870 and 1970 Constitutions was to Ban "True" Local Legislation like the Enabling Act

Braden & Cohn recognized that even under the 1870 Constitution, most problems were created by "local legislation in artificial classification disguises" *Id.* at 226 (APL 62), and that a truly "local' law, which merely named the geographic subdivisions where it applied, was not permissible. Their analysis revealed that such laws were so rare, and so clearly unconstitutional, that even Article 22 would bar them:

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

Id. at 207. Echoing Professor Kales' analysis[8] of the cases under Article 22, Braden & Cohn identified the related principle that, in dealing with statutes that have a local application, " a court should demand that the legislature so draft its statutes that the rationality of the classification is explicit." Braden at 212. But truly local laws, like the

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

Enabling Act, do not even, technically, contain any classification, because "[a]cts relating to local political subdivisions by name are a form of identification and *not classification*." Singer, Norman J. & Singer, Shamie J.D., 2 SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 40:8 (7th ed.) (West 2011)(emphasis added). Such laws defy the ability of the court to identify, much less assess, the basis for the classification, and should not be permitted.

If the Enabling Act would have been unconstitutional under the prior constitution, it surely cannot survive the current one. Shortly after the new Constitution was adopted, this Court held that it means what it says:

> [T]he new section 13 of article IV has increased judicial responsibility for determining whether a general law 'is or can be made applicable.' Unless this court is to abdicate its constitutional responsibility to determine whether a general law can be made applicable, the available scope for legislative experimentation with special legislation is limited, and this court cannot rule the legislature is free to enact special legislation simply because 'reform may take one step at a time.'(citations omitted) *The constitutional test under section 13 of article IV is whether a general law can be made applicable.*

Grace v. Howlett, 51 Ill. 2d 478, 487 (1972) (emphasis added)

3. This Court Should Resolve the Irreconcilable Conflict that Exists In Cases of True Local Legislation

Before the Appellate Court, the City took no issue with the Plaintiff's conclusion that the intent of Section 13 was to ban the Enabling Act, except to claim that "whatever might have been the 'intent of the drafters ... is now irrelevant." (Appellees' Brief at 22). That statement is incorrect as a matter of statutory construction and constitutional interpretation, but is, remarkably, a fair description of the jurisprudence recently applied to the question of local legislation. At the same time *Grace* recognized the new requirement for heightened judicial scrutiny, this Court also, somewhat paradoxically determined that "section 13 requires no change in our definition of when a law is 'general

and uniform,' 'special,' or 'local.'" *Bridgewater v. Hotz*, 51 Ill. 2d 103,110 (1972). *Bridgewater,* it was later held, "requires an application of those well-settled equal protection principles developed prior to the 1970 constitution." *In re Belmont*, 11 Ill. 2d 373,379.[9] With that, the Court then cited and relied upon a dozen cases decided under Article 22 of the 1870 Constitution, decided between 1893 and 1966. *Id* at 379-81 . The fears of the drafters of Section 13, that their work might be in vain, were thus realized:

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

Braden at 225 (APL 61) (emphasis added).

These "old pseudo-special legislation rules" first collided with a case of "true" local legislation in *Cutinello v. Whitley*, 161 Ill. 2d 409 (1994). Although the litigants (and this Court) treated the statute at issue as potentially "special" legislation, it specifically allowed only three named counties (of the 102 in the state) to adopt a special fuel tax, and so was, like the Enabling Act, a once-rare instance of facial, or "true," local legislation. By *naming* the counties, a closed end "classification", rather than *describing* counties which had unique needs, the legislature precluded the law from applying rationally in the future to all counties with conditions similar to those that had warranted the enactment in the first place. The dissent noted the problem: "The act merely names,

---

[9] The Courts have not explained why, if local and special legislation challenges are to be judged by the same standards as equal protection challenges, the 1970 Constitution, which now contains an equal protection clause, still bans local and special legislation.

without any qualifying characteristics, the three counties included within its scope. *Id.* at 427-28 (Freeman, J., dissenting) The effect of *Cutinello* has been pernicious, The bill drafting manual for the Illinois General Assembly touts the opinion it as it advises scriveners that they may now disregard the ban on local legislation:

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

Illinois Bill Drafting Manual, Sec 20-15 (Legislative Reference Bureau, December 2012). Because *Cutinello* upheld the constitutionality of a facially local law, and now the Appellate Court has upheld a facially local law that combines the county-naming feature in that case and extends it to municipalities only in named counties, this Court should grant review and clarify what, if any, local legislation is still banned by Section 13.

B. The Appellate Court's Decision Conflicts with this Court's Holdings

The Enabling Act classifies municipalities based solely on the counties in which they are located, and on no other characteristic. The classification was made at the *county* level, but the objects of the laws were *municipalities*. This Court has twice struck down similar statutes: *In re Belmont Fire Prot. Dist.*, 111 Ill 2d 373,(1986), and *In re Vill. of Vernon Hills*,168 Ill. 2d 117 (1995). The Order of the Appellate Court, analyzing the very same type of statute, reaches a contrary result, warranting review.

In *In re Belmont,* this Court, even as it imported deferential equal protection concepts into Article 13 jurisprudence, ultimately invalidated a statute that to any municipalities in a defined County (but to no other municipalities) authority to eliminate fire protection districts that covered more than one municipality. In striking down this law, this Court explained:

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

111 Ill. 2d 373,382 (1986) (emphasis added). This Court clarified that when municipalities are the proper object of the law (as in the Enabling Act) legislative classifications must be made at that level:

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

Id. at 385, (emphasis added). In 1995 this Court struck down a similar law (which operated only in Lake County) and specifically emphasized that *Cutinello* did not alter the analysis for cases involving municipalities:

> *Cutinello*, *Nevitt*, and *Bilyk* are therefore unlike the present case. Here, as in *Belmont*, there is no relationship whatsoever between county population and the need for *municipalities* to consolidate fire protection districts.

In re Vill. Of Vernon Hills, 168 Ill. 2d at 129 (emphasis added).

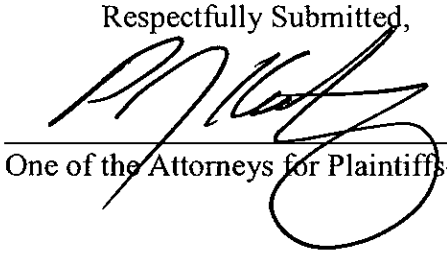
"'A law is general not because it embraces all of the governed, but because it may, from its terms, embrace all who occupy a like position to those included.'" *Cutinello v. Whitley*, 161 Ill. 2d 409, 432–33 (1994) (Freeman, J., dissenting) (*quoting Bridgewater v. Holtz*, 51 Ill. 2d 103, 111 (1972)); *see also In re Estate of Jolliff*, 199 Ill. 2d 510, 518 (2002). With its geographic limitations, the Enabling Act cannot be general, because it treats similar municipalities very differently. Plaintiffs here were denied the opportunity to present evidence in the circuit court, but with judicial notice of basic facts even a few examples show the arbitrariness of the eight county delineation in the

Enabling Act: it treats municipalities that are as different as can be imagined the same, yet fails to treat very similar municipalities equally. Thus, Lenzburg (pop. 521) and Symington (pop. 87), small rural villages, are permitted to install red light cameras, because they are within one of the eight counties while citieslike Springfield, Peoria and Rockford, are not permitted to install cameras. Rapidly-growing suburban Oswego, with 30,355 residents may not use RLCs because it is in Kendall County. This is not a case of "imperfect" line drawing, this is a case of a legislative distinction that operates in a "random fashion" and so is unconstitutional. *Christen v. Cnty. of Winnebago*, 34 Ill. 2d 617, 623 (1966)

CONCLUSION

For the reasons described above, plaintiffs request that Court grant their Petition for Leave to Appeal, and hear this case.

Dated: May 13, 2013 Respectfully Submitted,



One of the Attorneys for Plaintiffs-Appellants

Derek Y. Brandt
Patrick J. Keating
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC
230 W. Monroe Street | Suite 2221
Chicago, IL 60606
(312) 759-7500

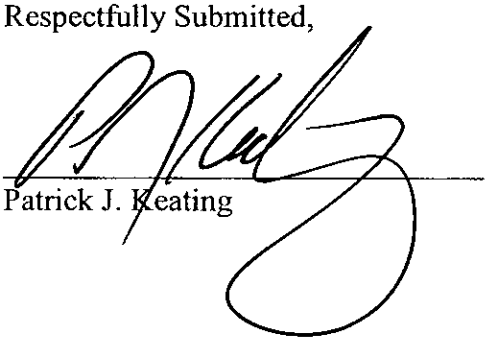
-and-

Andrea Bierstein
HANLY CONROY BIERSTEIN SHERIDAN
FISHER & HAYES LLP
112 Madison Avenue
New York, NY 10016
(212) 784-6400

Supreme Court Rule 341(c) Certificate of Compliance

Pursuant to Supreme Court Rule 341(c), I certify that this Petition for Leave to Appeal conforms to the requirements of Rules 341(a) and (b). The length of this Petition, excluding the appendix, is 20 pages.

Respectfully Submitted,



Patrick J. Keating

APPENDIX

TABLE OF CONTENTS

TO APPENDIX TO PETITION FOR LEAVE TO APPEAL

FOURTH DIVISION
January 24, 2013

No. 1-11-2559

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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

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

ORDER

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

APL 01

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

¶ 1 BACKGROUND

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

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

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

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

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

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

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

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

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

¶ 8 ANALYSIS

¶ 9 I. Standing

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

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

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

¶ 12 A. Plaintiffs Elizabeth Keating and Shirley Peacock

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

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

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

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

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

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

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

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

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

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

¶ 22 II. Chicago's Ordinance is Valid

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ordinances were not in conflict with the Illinois Vehicle Code.

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

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

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

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

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

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

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

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

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

> "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13.

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

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

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

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

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

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

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

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

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

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

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

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

"SENATOR RIGHTER:

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

PRESIDENT JONES:

Senator Cullerton.

SENATOR CULLERTON:

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

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

¶ 60 IV. Voluntary Payment Doctrine

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¶ 79 CONCLUSION

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

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

¶ 82 Affirmed.

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

ELIZABETH KEATING, PAUL KETZ, RANDALL D. GUINN, CAMERON W. MALCOLM, JR., CHARLIE PEACOCK, SHIRLEY PEACOCK and JENNIFER P. DiGREGORIO, individually and on behalf of all others similarly situated,	)	
Plaintiffs-Appellants,	)	
v.	)	No. 1-11-2559
CITY OF CHICAGO, a Municipal Corporation,	)	
Defendant-Appellee.	)	

ORDER

This cause coming to be heard on plaintiffs-appellants' petition for rehearing, the answer and reply and the court being fully advised in the premises;

IT IS HEREBY ORDERED that the petition for rehearing is DENIED.

ORDER ENTERED

APR - 8 2013

APPELLATE COURT, FIRST DISTRICT

Justice

Justice

Justice

THE ILLINOIS CONSTITUTION:

AN ANNOTATED and COMPARATIVE ANALYSIS

by George D. Braden
and Rubin G. Cohn

Prepared for ILLINOIS CONSTITUTION STUDY COMMISSION

THE ILLINOIS CONSTITUTION:

AN ANNOTATED and COMPARATIVE ANALYSIS

by George D. Braden
and Rubin G. Cohn

Prepared for ILLINOIS CONSTITUTION STUDY COMMISSION

Thomas G. Lyons, *Chairman*
Terrel E. Clarke, *Co-Chairman*

INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS
UNIVERSITY OF ILLINOIS • URBANA

October, 1969

APL 37

STATE OF ILLINOIS

CONSTITUTION STUDY COMMISSION

160 North LaSalle Street
Room 1315
Chicago, Illinois 60601

September 1969

To the Members
Illinois Constitutional Convention

The Illinois Constitution Study Commission was created by the General Assembly to undertake preparatory work to expedite the operation and organization of the Illinois Constitutional Convention.

One project that the Commission decided to undertake through its contract with the Institute of Government and Public Affairs of the University of Illinois, Urbana, was an annotation of the Illinois Constitution of 1870, somewhat similar to that prepared for the 1920 Constitutional Convention. The Institute, with the concurrence of the Commission, engaged George D. Braden of the New York Bar, and Professor Rubin G. Cohn of the University of Illinois College of Law, to undertake the project. The General Electric Company graciously granted Mr. Braden a leave of absence from his position in New York City. Based on the experiences in other states, the project was broadened to include comparative material on constitutions of other states.

We feel that this impressive and comprehensive manuscript will be of invaluable help to the members of the Convention. It should answer most of the questions of the members as they proceed with their work of preparing a draft of a constitution for submission to the voters.

Although this was a Commission project, the two authors take responsibility for the manuscript. In the Preface, they discuss the division of responsibility between themselves.

The Commission is proud to make THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS available to the Convention members.

Thomas G. Lyons, Chairman

Terrel E. Clarke, Co-Chairman

APL 38

have intervened." The Model State Constitution provides that the legislature determine its own salaries and allowances, "but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same."

Comment

It seems fairly obvious that the 1870 Convention made a sound decision when Section 21 was so drafted that legislators' salaries could be increased by statute. At first blush it would appear that to have limited reimbursement of expenses so severely was inconsistent. But at the time there was no income tax, and it was reasonable to prevent legislatures from hiding their pay increases by increasing their expense perquisites. For example, if the amount normally required for postage, telegrams, and the like were $50 a session per legislator and the allowance were $500, this would be a hidden pay increase. Today, many decisions are vitally affected by income tax rules, and in the light of those rules it is illogical to compensate a legislator for deductible expenses by an increase in salary. To use the same example, if today the amount normally required for postage, telegrams and the like is $500 and the $50 limitation stands, a salary increase must exceed $450, for a legislator must pay an income tax on the salary and he ends up with less than enough to cover his expenses. (See also the *Comment* on Sec. 11 of Art. IX, *infra*, p. 476, concerning the general problem of salary changes.)

Special Legislation Prohibited*

Sec. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For —

(1) Granting divorces;
(2) Changing the names of persons or places;
(3) Laying out, opening, altering and working roads or highways;
(4) Vacating roads, town plats, streets, alleys and public grounds;
(5) Locating or changing county seats;
(6) Regulating county and township affairs;
(7) Regulating the practice in courts of justice;
(8) Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables;
(9) Providing for changes of venue in civil and criminal cases;
(10) Incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village;
(11) Providing for the election of members of the board of supervisors in townships, incorporated towns or cities;
(12) Summoning and impaneling grand or petit juries;
(13) Providing for the management of common schools;
(14) Regulating the rate of interest on money;
(15) The opening and conducting of any election, or designating the place of voting;

(16) The sale or mortgage of real estate belonging to minors or others under disability;
(17) The protection of game or fish;
(18) Chartering or licensing ferries or toll bridges;
(19) Remitting fines, penalties or forfeitures;
(20) Creating, increasing, or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed;
(21) Changing the law of descent;
(22) Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purposes.
(23) Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted.

*Note: For purposes of discussion, item numbers have been given to the enumerated cases. These numbers are not official.

History

The 1818 Constitution had no prohibition on special legislation. The 1848 Constitution nibbled at the edges of the problem. There was a specific prohibition against legislative divorces and against the "sale of any lands or real estate belonging in whole or in part to any individual or individuals." That Constitution also recommended creating private, but not municipal, corporations by general law, but did not actually prohibit private corporate charters. (See *History* of Sec. 1 of Art. XI, *infra*, p. 515.) By negative implication, the 1848 Constitution prohibited local legislation creating a township organization in a county. (See *History* of Sec. 5 of Art. X, *infra*, p. 496.)

By the time the 1870 Convention met, the problem of local and special legislation had become alarming. Some indication of the magnitude of the problem is given in the Municipal Home Rule Bulletin prepared for the 1920 Convention:

"The total mass of special legislation is indicated in the increasing volume of state laws. In 1857 the private laws formed a volume of 1,550 pages. By 1867, the private laws were published in three volumes of more than 2,500 pages, of which 1,050 related to cities, towns and schools. In 1869 there was a further increase to four volumes of 3,350 pages, of which 1,850 pages related to cities, towns and schools." (Bulletins 384.)

It is small wonder that the Committee on the Legislative Department of the 1870 Convention presented a section not differing too much from what became Section 22. The debate on the section opened with a proposal to substitute an absolute prohibition on passing "any local or special law in any case whatever." Several delegates supported this blanket prohibition, including one who observed that some of the itemized

prohibitions covered subjects on which he had never known any private or special legislation to be passed. The principal argument for the "laundry list" approach was made by Mr. Medill of Chicago, a member of the committee. He said, in part:

"The members of the committee considered in detail all the objects of special legislation of which the people have complained for a quarter of a century or more, and we carefully provided against every instance of that kind. We went through the similar provisions in the Constitutions of other States, and copied all the best things we could find therein.

"...It would be probably unsafe and imprudent to foreclose every contingency that might arise in the future, requiring some special act to be passed. There are some things that no Legislature can provide for, by general laws, in advance of the event or necessity. There are contingencies that may arise requiring a particular act for a local and particular purpose. . . . No human wisdom can foresee all the necessities and contingencies of the future." (Debates 583.)

Some delegates supported Mr. Medill's opposition to the blanket prohibition while other delegates indicated that they favored more freedom for the legislature than was provided by the committee proposal. Presumably, these two groups joined hands in voting. In any event, the blanket prohibition was voted down by voice vote and the Convention, sitting in Committee of the Whole, turned to a consideration of each clause of the section.

One and a half days were devoted to consideration of Section 22, about a third of which time concerned the foregoing effort to prohibit all special and local legislation. The balance of the debate, a full day, was mostly devoted to one enumerated case — "Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village." Here the Cook County delegates were the principal opponents of the prohibition. (For their arguments, see *History* of Sec. 34, *infra*, p. 247.) At the end of the debate on the charter prohibition, all efforts at amendment were defeated by voice vote.

Most of the other enumerated cases proposed by the Committee on the Legislative Department were accepted as written or with a slight change, and in either case without extended debates. Two or three enumerated cases were offered from the floor and accepted, again without extended debate. There were one or two proposals to weaken prohibitions, but all were turned away. At the very end of the debate, the concluding "In all other cases" sentence was offered from the floor and accepted. When the section was considered by the Convention proper, the work of the Committee of the Whole was accepted without change. The Committee on Revision and Adjustment made some style changes, moved one prohibition to the article on corporations (Sec. 1 of Art. XI, *infra*, p. 515), and dropped a prohibition on extending a term of office by special act,

END

since Section 28 of Article IV (*infra*, p. 236) is a total prohibition on such extensions.

The proposed 1922 Constitution preserved the "laundry list" format of this section with several changes, one of which is particularly instructive. To the enumerated "protection of game or fish" were added the words "unless by reasonable classification of waters." (See discussion below, p. 220, concerning the necessity for this exception.) Several items were omitted because they were adequately covered by other provisions. For example, at the time of adoption in 1870, the "county seat" removal enumeration was unnecessary by virtue of Section 4 of Article X. (*Infra*, p. 494.) Presumably, the 1922 drafters thought that locating a county seat for a new county would not arise. In any event, they omitted the prohibition. The other omissions were rules of practice in courts, changes of venue, and jurisdiction of justices' courts; elections of members of boards of supervisors; and the prohibition on increasing or decreasing fees and allowances. All of these were covered elsewhere. The prohibition on creating private corporations by special act was taken out of the article on corporations and placed in the "laundry list" section. The catch-all sentence at the end of Section 22 was made a separate section.

Explanation

Introduction: In general, it has been possible in preparing this analysis of the Illinois Constitution to include references to those court cases that have contributed significantly to the meaning or understanding of the section. In a way, a rather stripped-down annotation has been provided. It is not feasible to do this with Section 22. There are too many cases involved and, for reasons spelled out below, the cases cover almost the entire range of government activity, so that a comprehensive discussion of the cases would approach a discussion of the constitutionality of almost everything other than levying taxes that the legislature has attempted to do in the last hundred years. In what follows, there is a general discussion of local and special legislation and the problem of classification; a reference, as appropriate, to cases concerning each of the 23 enumerated cases; and a discussion of the catch-all prohibition on special legislation.

In General: Any discussion of this complicated subject of special and local legislation requires a primer-like exposition. To begin with, there is a clear-cut distinction between "local" and "special" legislation, but, unfortunately, the terms are used loosely and, as is so often the case, situations arise which do not fit the distinction neatly. A local law is one which applies only to the government of a portion of the territory of the state, and a special law is one which applies only to a portion of the

state – its people, its institutions, its economy – in some sense other than geographical. A general law is one which applies universally. Local and special laws are known as "private laws" and general laws as "public laws." It must be pointed out that, in addition to the imprecise use of these terms, the accepted practice of classification, discussed below, results in "universal" laws which in fact have only a "local" application; and that, by use of Section 22 as the equivalent of an equal protection clause, general laws that are invalidated are said to be "local or special laws." Moreover, even an effort at precision in the use of the terms is difficult. For example, a general law may provide for local government charters under the mayor-council, the commission, or the city manager system. If one of the three forms of government is permitted to do something denied to the others, and a court invalidates the permission under Section 22, it is a neat question whether the problem is one of a "local law" or a "special law." In one sense, the matter deals with a limited geographical area, but in another sense, the distinctions are state-wide, and the problem hinges on the special way in which one of three groups is treated. (In another context, a recent case involving this very distinction is discussed below, pp. 211-12.)

Normally, in the law as elsewhere, the obvious violation of a rule not only creates no problems, it rarely occurs. This is true of local and special legislation. An obvious example of local legislation would be a statute proposing to permit the city of Onetown to have five dog-catchers, notwithstanding a general law that limited all cities to four dog-catchers. Another example would be a law which permitted Onetown to annex North Onetown, whether or not there was a general law setting forth a procedure for annexation. An obvious example of special legislation would be a bill granting a divorce to John Doe from his wife, Dosie. Another example would be a law granting a corporate charter to Tom, Dick and Harry for the business of operating an employment service.

In order to keep the problem of local and special legislation in perspective, it is appropriate to mention briefly the reasons for prohibiting it. The major reason, at least in the middle of the Twentieth Century, is that, if it is permitted, an inordinate amount of legislative time is taken up with local and special legislation. Connecticut, for example, until the adoption of a new constitution in 1965, permitted local and special legislation, and the common practice, particularly in the area of local legislation, was to solve any local problem by getting the local legislator to introduuce a private bill. Under such a system, legislators are normally interested only in their own private bills, and passage is relatively easy. Moreover, many legislators can achieve high status as easily by their attention to

the support of local and special legislation as by their qualities as legislators concerned with the problems of the state as a whole.

In the case of special legislation, there are two significant dangers. One is that the influence of special interests is greatly increased and the likelihood of corruption, "honest and dishonest," is accordingly increased. If there is public concern, as there usually is, over the influence of special interests in protecting themselves from the effect of general legislation, such concern would be much greater if special legislation were freely permitted. The other danger is that some special legislation, particularly in the case of corporate charters, can create vested rights that cannot be taken away easily. Much of the Nineteenth Century crusade against special legislation was directed at the effective "sale" of permanent privileges and the corruption that "greased" the way for such "sales."

One final point in the story of the history of local and special legislation is that, by and large, legislators under a system permitting such legislation dislike it. But for obvious reasons, they find it most difficult to resist the requests of their constituents. It borders on irony that those students of constitutional theory who oppose restrictions on the power of the legislature generally support a prohibition on special and local legislation. (See the Model State Constitution's provision in the *Comparative Analysis* below.) It also borders on irony that legislators probably do not object to such a constitutional restriction on them, for there is surely no easier way to turn away an insistent constituent than to point to a prohibition in the Constitution. Perhaps two ironies make a right.

The reasons for prohibiting local and special legislation may be exemplary, the examples of the evils may be delineated in blacks and whites, and yet the realities of a complex society quickly introduce exceptions and circumlocutions that produce borders of gray. And the controversies, the litigation, naturally fall in the gray area. The gray-area problems of local legislation differ, however, from the problems of special legislation. Moreover, in the case of special legislation, for reasons discussed below, rules have been imported into the gray area that are actually irrelevant to the real evil of special legislation. The portmanteau word that carries within it all these grays is "classification."

In the case of local legislation, a simple black and white example of five dog-catchers for Onetown was given above. But suppose that Onetown were the only city in the state which bordered on an uninhabited wilderness in which there were packs of wild dogs. It would make great sense to permit Onetown to have more dog-catchers than other cities in the state. (If it is asked why the state concerns itself with the number of dog-catchers anyway, it can be assumed that experience has taught that the job of dog-catcher is a traditional sinecure for faithful party workers

and that without a state limit, many cities would end up with dozens of dog-catchers who drew pay but did no work.) This assumed example demonstrates the means by which general legislation can be constructed which is applicable only to one locality. Instead of passing a bill allowing Onetown to have five dog-catchers, the legislature amends the general law by including an exception for any city bordered by an uninhabited wilderness. The exception purports to be general, but in fact applies only to Onetown. (There is a special problem in drafting, discussed below in connection with Professor Kales' article, which would make it advisable to include after the word "wilderness" such words as "conducive to the harboring of packs of wild dogs which prey on such bordering city.")

From the foregoing analogy, it is easy to see that there are innumerable matters of justifiable state concern, even with acceptance of maximum home rule, in which the impact of legislation on Chicago should be different from the impact on any other city in the state. In most instances, the reason for this is that Chicago is different because it is so large. The classification solution is simply to pass a general law applicable to cities with a population in excess of 500,000. Again, the assumption must be that the classification is reasonable in relation to the purpose of the legislation. It would be difficult to support a classification applicable to cities in excess of 500,000 if there were three large cities with populations of 468,000, 493,000, and 531,000, respectively. But if the third city was the only one on a lake and if the purpose of the statute was related in some way to the presence of a lake, then a classification of coverage of cities over 500,000 bordering on a lake would be a rational one. There have been occasions in some states when the legislature goes to the other extreme. Instead of passing what is a legitimate general law tailored to a special local problem, the legislature tries to pass a purely local law by the device of an artificial classification. For example, a bill applicable to cities over 95,000 but under 100,000 in population would be suspect, for there can hardly be a legitimate purpose for singling out such a narrow population spread. (For an Illinois example of a classification by description found to be too narrow, see Pettibone v. West Chicago Park Comm'rs, 215 Ill. 304 (1905).)

In 1906, Albert M. Kales, a noted legal scholar, wrote an article in the *Illinois Law Review*, now the *Northwestern Law Review*, under the title "Special Legislation as Defined in the Illinois Cases." (1 Ill. L. Rev. 63.) Professor Kales was an authority in a completely different field of law, and the explanation for his article appears to be simply that he was rather annoyed with a broadside attack on constitutional prohibitions against local legislation which had appeared the previous year. (*See* Hub-

bard, "Special Legislation for Municipalities," 18 Harv. L. Rev. 588 (1905).) In any event, Kales carefully analyzed the Illinois cases, mostly involving local legislation, or more accurately, local problems treated on a selective basis by the classification device. Kales pointed out at the beginning of his article that he was not in any way concerned with general regulatory legislation that was called special legislation because the courts disagreed with the legislative basis for determination of whom or what to regulate. (See discussion of special legislation below.)

After analyzing the local legislation cases in Illinois to the date of his article, Kales extracted three principles, as follows:

"First: If there is a rational ground for legislating in behalf of the objects to which the Act applies and not for others of the same general sort, and if the rationale of the distinction is embodied in the Act's description of the objects themselves to which it applies, then the Act is not 'local or special' law. (Kales, "Special Legislation as Defined in the Illinois Cases," 1 Ill. L. Rev. 63, 66-67 (1906).)

"Second: If there be no rational ground of distinction, on any view of the facts, upon which some objects are legislated for and others of the same general sort are not, the Act is a 'local or special' law. (*Id.* at 70.)

"Third: Even if there be one or more rational grounds for legislating in behalf of the objects to which the Act applies and not for others of the same general sort, yet *if no rational ground is embodied in the Act's description of the objects to which it applies* then the Act is held to be 'local or special.' " (*Id.* at. 76.)

There are three comments to be made about these three principles. The first comment is that the first two principles are neither startling nor earth-shaking. They represent the careful, scholarly formulation of the two sides of the obvious proposition that a good reason is required to support "general" legislation that is not universally applicable. It is Kales' third principle that is a key to acceptable classification. Kales is saying, in effect, that if the legislature has a reason for classification, it must state what the reason is and the courts will judge the rationality of the classification by the stated reasons, not by any conceivable basis that someone might dream up. The importance of this formulation is that it may explain the invalidation of legislation which appears to have a rational basis for classification. It is this type of invalidation that causes people to throw up their hands in despair at understanding the theory of classification.

In order to put some meat on the Kales' skeleton, it is appropriate to review the examples that he used to demonstrate his third principle. His principal one is *People* ex rel. *Gleeson v. Meech* (101 Ill. 200 (1881)), where the Supreme Court invalidated an act which said that justices of the peace should have county-wide jurisdiction except in Cook County which was to be divided into two districts, one consisting of Chicago and the other of the balance of the county. Suppose, Kales suggested, the

act had said that every county should have one district except a county containing a city with a population in excess of 100,000, in which case there should be two districts. The point Kales made was that the actual statute singled out Cook County, whereas his suggestion separated counties into two classes on a basis that on its face was rational.

He drove his point home by contrasting two cases that involved statutes passed as a result of the Chicago fire. One case involved the Burnt Records Act which dealt with establishing land titles in any county whose land records had been destroyed by fire. The act was upheld. (Bertrand v. Taylor, 87 Ill. 235 (1877).) The other case involved a statute of limited duration authorizing a county with a population in excess of 100,000 to issue bonds for the construction of a courthouse on a site "heretofore used for that purpose." The act was held invalid. (Devine v. Board of Comm'rs, 84 Ill. 590 (1877).) Kales noted that the first statute applied only to Cook County but by its terms would apply to any other county which ever lost its land records by fire, whereas the second statute in fact simply permitted Cook County to issue bonds for a new courthouse. Presumably, though Kales was not this explicit, if the legislature had authorized any county which lost its courthouse by fire to issue bonds for a new courthouse, the statute would have been upheld. It might even have been possible to qualify the fire as one causing a specified amount of destruction in the county seat in order to limit the authority to a situation where special power to issue bonds would be essential. Kales concluded his article by conceding that the distinctions made were a matter of form, but he maintained that form is important if the courts are to be able to determine that there is a reasonable basis for classification.

The second comment to be made about the Kales' principles is that with all their precision, they had an accordion word throughout—"rational." One man's "rational" is another man's "irrational," and judges are men. It is likely that any group of lawyers could sit around a table reviewing all the local legislation cases of Illinois and agree on the controlling principles of decision while disagreeing on whether the courts followed the principles.

The third comment is a corollary to the foregoing. The process of deciding whether a given classification is or is not rational is sufficiently subjective that the milieu in which the problem arises may influence the course of decision. For example, in the recent case of In re *Struck* (41 Ill. 2d 574 (1969)), the Supreme Court decided that the provision of the Municipal Code that permits the recall of elective officials under the commission form of government is invalid under Section 22 because "there is no reasonable relation between the objectives sought to be accomplished by the recall procedure and the differences in the various

forms of municipal government. Either the recall procedure should apply to none, or all forms of municipal government should be free to adopt it." (*Id.* at 579.) The interesting point about the facts of that case is that the alleged ground for wanting the officials removed was that they had voted for ordinances that they knew the voters opposed. The ordinances were the Uniform Housing Code and Uniform Building Code Short Form, the State Plumbing Code, a national Fire Prevention Code, and the National Electrical Code. Although simply disagreeing with policy decisions is an acceptable reason for recall, one can speculate whether the Court would have read the problem of classification differently in a case where the petition alleged bribery, corruption and embezzlement rather than opposition to ordinances of a type generally believed worthwhile. In any event, it is certain that the judicial process of determining when a classification is acceptably rational is one in which the governing principles may be crystal clear but the prediction of decisions under the principles is difficult. (Compare the discussion of "Revival and Amendment" under Sec. 13, *supra,* p. 160.)

This discussion of local legislation may be summarized thus: (1) The purpose of a ban on local legislation is to prevent the state legislature from concerning itself with a purely local problem. (2) But, 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. (3) In steering a course between (1) and (2), a court should demand that the legislature so draft its statutes that the rationality of the classification is explicit. (4) Notwithstanding the clarity of the principles involved, there is such latitude in applying them that the courts have considerable freedom, and there is little assurance that accurate predictions can be made — by legislature or litigants.

The story of special legislation is quite different. As noted earlier, there is little difficulty in recognizing a blatant bit of special legislation, and, in fact, legislatures do not pass that kind of bill. The difficulty arises because it is almost impossible to legislate on a truly universal basis. Any statute, explicitly or implicitly, excludes somebody or something. Even the fundamental proposition that anyone born in the United States is a citizen has an explicit exception. The Fourteenth Amendment to the United States Constitution includes the phrase, "and subject to the jurisdiction thereof," thereby excepting, for example, children born of parents who have diplomatic immunity. Thus, courts enforcing a prohibition on special legislation are constantly faced with an argument that the general law before the court is really a special law because of some exclusion from coverage.

Out of all this grows the body of rules of classification. The short statement is that a law remains general so long as the basis for inclusion and exclusion under the law is reasonable. But, as in the case of reasonable classification for local laws discussed above, the statement of principle is of limited value, for reasonable men frequently disagree about what is reasonable. Moreover, as discussed earlier in connection with Section 1 of this Article (*supra*, p. 111), reasonableness of classification has been used by the courts in the same manner as they use the due process and equal protection clauses. That is, the determination of reasonableness becomes, to some extent, an expression of opinion on the soundness of the legislature's action.

One fairly recent case, *Monmouth v. Lorenz* (30 Ill. 2d 60 (1963)), will suffice to demonstrate the complexity of classification as an element in the judicial process. The case involved the Prevailing Wage Law (Ill. Rev. Stat. ch. 48, §§ 39s-1 to 39s-12 (1967)), which requires the payment of wages at the prevailing area rate to craft workers on public works construction projects. One of the specific issues in the case was the validity of the requirement that such prevailing wages had to be paid to construction employees of government bodies as well as to construction workers employed by private contractors building public works. The law "in effect made a single classification of all employers of laborers, workmen and mechanics engaged in the construction of public works whether the employer be a contractor or a public body." (City of Monmouth v. Lorenz, 30 Ill. 2d 60, 65-66 (1963).)

The Court continued:

"It is well established that equal protection of the law is not violated as long as the selection of objects for inclusion and exclusion within the class, upon which the legislation acts, rests upon a rational basis. ... Here the legislation has put into a single class public bodies and construction contractors which are for most purposes two entirely different classes. It is true that each class may employ laborers, workmen and mechanics for the construction of public works and that the legislation in question deals only with this common characteristic of the two classes. Labels may be deceptive, however, and labeling the two classes as employers of workmen for the construction of public works does not cover the vital and real differences between the two classes of employers and their respective employment relationships with their employees. Government employment is generally of a steady nature and entails fringe benefits, whereas employment by a private contractor is unusually seasonal and does not carry like fringe benefits. These disadvantages of seasonal employment and lack of fringe benefits are compensated, of course, by the payment of higher wages. The workmen employed by the public body may do as well as or better in the long run than the workmen employed by a private contractor although his *rate* of pay be not as high. The object of the legislation in question is to insure that workmen on public projects receive the same economic benefits as workmen on projects of a similar nature by regulating the rate of pay they are to receive but rate of

pay is just one factor in determining the economic benefits to be derived from employment, and where, as here, the two classes of employers are by their very nature in such a position that they cannot and do not confer similar economic benefits on their employees exclusive of the rate of pay, an act requiring both classes to pay their employees on construction at the same rate violates the equal protection clause of both the fourteenth amendment to the Federal constitution and section 22 of article IV of the Illinois constitution." (*Id.* at 67-68.)

The foregoing quoted excerpt from the *Monmouth* case serves as a demonstration of the somewhat subjective nature of the determination of the reasonableness of a given classification, as a demonstration of the complexity of the concept of classification, and as an example of the difficulty of trying to cover in this *Explanation* the entire range of constitutional decisions on reasonableness of classification.

The words "somewhat subjective" are used because, following the initial sentence setting forth the general principle of classification, the Court's opinion is simply a well-reasoned argument for not requiring the payment of prevailing construction wages to government employees. It is a wise argument that should have been made to the legislature and one that many people would think should have prevailed. But wisdom aside, it is not easy to see how a legislature can be labeled irrational for deciding that all people who work on public construction should be paid the prevailing wage.

The *Monmouth* case also demonstrates the complexity of classification. Consider, first, the initial sentence of the quoted portion of the opinion. It speaks of "equal protection," not of "general legislation." It speaks of "objects for inclusion and exclusion within the class," not of "exclusion" only. Thus, the sentence prepares the ground for invalidating the legislation under Section 22 on the ground that two things that are different are treated alike. Conceptually, this is understandable in the context of equal protection of the laws, but it is most difficult to conceive of a law as "special" because it is universal rather than limited in its application.

Once it is recognized that the prohibition on special legislation has been used by the courts for purposes far beyond the particular evils which the drafters of the 1870 Constitution had in mind, it is clear that no comprehensive annotation can be undertaken here. In the Annotation to Section 22 by Smith-Hurd there are over 180 headings, of which approximately 85 deal with the 23 enumerated cases. Most of the rest of the headings deal either with the general principles of classification or with different businesses, occupations, and other specific subjects. One heading, "Classification for legislative purposes—In general," (Smith-Hurd, Illinois Annotated Statutes, Constitution, arts. I-V at 643 (1964)), includes two paragraphs simply listing cases, in the one instance of those in which the classification was held void, and in the other of those in which the

classification was sustained. A third paragraph cites a couple of cases for the proposition:

"The classification of objects of legislation is not required to be scientific, logical or consistent, if it is reasonably adapted to secure purpose for which it is intended, and is not purely arbitrary." (*Id.*)

The general principle is clear; the application, case by case, is not.

The Specified Prohibitions:

(1) *Granting Divorces*: Apparently, the legislature has never tried to violate this prohibition. Two court cases have, however, referred to it. In one case, a rather far-fetched attack was made on a statute permitting waivers of a 60-day waiting requirement in divorce actions under which individual judges could differ in deciding what facts justified a waiver. The Supreme Court gave short shrift to the claim that a special law granting divorces was involved. (People *ex rel.* Doty v. Connell, 9 Ill. 2d 390 (1956).) In the other case, a statutory effort to provide different procedures for divorce actions in counties of over 500,000 population was invalidated under the local law rule discussed earlier, but was held not to be a special law under this specific prohibition. (Hunt v. County of Cook, 398 Ill. 412 (1947).)

(2) *Changing Names*: No cases and, presumably, no special laws. Obviously, it is necessary on occasion to change the name of a place. This prohibition simply forces the legislature to delegate the power to make changes. (*See, e.g.,* Ill. Rev. Stat. ch. 105, § 8-9 (1967), giving the governing board of a park district the power to change the name of a park.)

(3) *Laying Out Roads*: An act attempting to validate an administrative selection of a road route appears to be the only truly special act invalidated under this prohibition. (Watts v. Department of Pub. Works & Bldgs., 328 Ill. 587 (1928).) Other cases involving roads have been cases of local versus general legislation. For example, it was held not permissible to make highway commissioners in nontownship counties personally liable for negligence in not keeping roads repaired while leaving commissioners in township counties not liable. (Kennedy v. McGovern, 246 Ill. 497 (1910).) (See also discussion on *Vacating Roads* below.)

(4) *Vacating Roads*: In a few instances of these specific prohibitions, it is evident that in fact action can be taken only on a case-by-case basis and that the legislature has to adopt a general law that delegates to someone the power to act. In 1870 there was no state highway system, and presumably the prohibition was aimed at preventing the legislature from superseding local governments. But somebody must have the power to vacate a single road, and the courts have recognized that a general law which delegates such power to a subordinate agency is no violation

of the prohibition. (*See* People *ex rel.* Hill v. Eakin, 383 Ill. 383 (1943); People *ex rel.* Franchere v. City of Chicago, 321 Ill. 466 (1926).)

(5) *County Seats*: No cases and undoubtedly no special acts. Indeed, so far as changing county seats is concerned, this prohibition was redundant from the beginning by virtue of Section 4 of Article X, covering removal of county seats. See *infra*, p. 494.)

(6) *Regulating County Affairs*: There are many cases involving statutes regulating county and township affairs, but they all appear to deal with validity of the classification under a general law. As a matter of fact, any local or special law purporting to be a general law within the coverage of any of the 23 specific prohibitions falls as a specifically prohibited act once the classification is found to be unreasonable. To put it another way, in one sense there are no local laws under this specific prohibition because there have been no laws regulating the affairs of County A by name or Township B by name; but in another sense, there have been such laws because the courts have refused to accept the purported classification.

(7) *Practice in Courts*: It is not clear whether this prohibition was aimed primarily at preventing a special act giving John Doe a one-shot procedural favor — *e.g.*, a cause of action notwithstanding the running of the statute of limitation — or at preventing a special act covering practice in one specific court — *e.g.*, the time to answer is extended from 20 days to 30 days in a particular circuit court. It seems doubtful that the prohibition was aimed at any of the types of legislation that have fallen afoul of it. For example, the Supreme Court once said that a statute setting forth the weight to be given to an administrative adjudication under workmen's compensation was a special law regulating the practice of courts. (Otis Elevator Co. v. Industrial Comm'n, 302 Ill. 90 (1922). The Court also said that the provision was in violation of separation of powers under Article III and contrary to due process. See discussion of Art. III, *supra*, p. 99.) Relatively recently, the Supreme Court struck down a provision under the school code which allowed only ten days in which to appeal one type of administrative decision while other types could be appealed within 35 days. (Board of Educ. v. County Bd. of School Trustees, 28 Ill. 2d 15 (1963).) Statutes such as are involved in cases like these purport to be general laws, and the question raised is the reasonableness of the "classification," normally in the sense of due process or equal protection of the law.

There are other cases involving court practice in which the classification problem is the traditional geographical local law situation discussed earlier. For example, a requirement for the payment of a jury fee is reasonable, even if in fact applicable only to Cook County. (Hunt

v. Rosenbaum Grain Corp., 355 Ill. 504 (1934). The Court also said that "juries" were not included under "practice in courts.") But a population classification of counties for the purpose of appointment of administrators of estates of nonresidents was held not reasonable. (Strong v. Dignan, 207 Ill. 385 (1904). As to the question of general legislative power over rules of practice, see *Explanation* of Art. III, *supra,* p. 99.)

(8) *Jurisdiction of Justices*: One of the cases on classification, *People* ex rel. *Gleeson v. Meech* (101 Ill. 200 (1881)), discussed earlier in connection with Professor Kales' article (*supra,* p. 210), was invalidated as a local law regulating the jurisdiction of justices of the peace. In view of the abolition of justices of the peace and police magistrates under the new Article VI, this specific prohibition is now presumably a dead letter.

(9) *Changes of Venue*: As in the case of other specific prohibitions, the original purpose of this change of venue restriction was probably to stop the legislature from passing private legislation such as shifting John Doe's suit to a different county notwithstanding the general venue statute. The only cases that appear to have arisen involved general venue matters. In one instance, special venue rules were proposed for the municipal courts of Chicago, but the statute fell because venue was not considered to be within the scope of permitted local legislation under Section 34 (*infra,* p. 246), and, paradoxically, part of a law which had been tailored to Chicago's special court system could not stand because Section 34 did not authorize a venue variation. (Feigen v. Shaeffer, 256 Ill. 493 (1912).) In the other instance, the Supreme Court gave short shrift to an argument that a venue differential between town courts and circuit courts was prohibited by Section 22. (People *ex rel.* Norwegian-American Hospital, Inc. v. Sandusky, 21 Ill. 2d 296 (1961).)

(10) *Special Municipal Charters:* This prohibition was one upon which the delegates in 1870 were most insistent. The speediest way to induce proliferation of local legislation is to allow special municipal charters, because subsequent amendments will also be by local law. But, as noted earlier (*supra,* p. 207), genuinely universal general laws are not practicable, and classification of one sort and another becomes a common practice. The earlier extended discussion on classification is applicable here.

Nevertheless, it is important to note that the prohibition is limited to "town, city or village." It is possible, therefore, to create a "municipal corporation" by special act. (*See* People *ex rel.* Coutrakon v. Lohr, 9 Ill. 2d 539 (1956).) Of course, such a "municipal corporation" would not be available to regulate county and township affairs ((6) above), or

management of common schools ((13) below). (See also discussion of final sentence of Sec. 22, *infra*, p. 222.)

It has been noted from time to time in this discussion, that courts use "special legislation" as a way to get at general laws that, in the eyes of the court, violate concepts of due process and equal protection. The same judicial manipulation of the concept of "local legislation" has been indulged in. In *Kremers v. City of West Chicago* (406 Ill. 546 (1950)), the Supreme Court was faced with a statute which set a statewide maximum rate for a library tax for cities, towns and villages. The computation of the maximum was tied to a figure for an earlier year in such a manner that the maximum possible levy would vary "irrationally" from town to town. The Court held the statute invalid. Such a statute does not appear on its face to be a local law "changing or amending the charter." But the Court said that if a statute purporting to be a "general law is to establish dissimilarity in the powers and modes of different municipalities in the levy and collection of taxes, then, since the laws conferring such powers and prescribing such modes become a part of the charters of the municipalities, it will be regarded as within the prohibition of [this section prohibiting local or special laws for incorporating municipalities or changing or amending municipal charters]." (*Id.* at 552.) It is also noteworthy that the statute in question was as "general" as it could be — one formula universally applicable. Unfortunately, it was a bad formula. (Compare the discussion of the *Monmouth* case, *supra*, p. 213.)

(11) *Election of Supervisors*: No cases and presumably no questionable statutes.

(12) *Summoning Juries*: There have been a few cases that referred to this prohibition, but none dealt with the literal meaning of it, which would seem to be designed to cover special acts which summoned and impaneled specific grand and petit juries out of the ordinary course of judicial administration. The cases that have arisen generally appear to have involved statutes classifying counties according to population so that Cook County had different rules for juries. In one case, a section providing a lower maximum age for jury service in Cook County was held invalid, but all other parts of the statute were upheld. (People v. Bain, 358 Ill. 177 (1934). Incidentally, the jury commissioners in Cook County had ignored the age differential and no one had been "injured" by the law.)

(13) *Management of Schools*: The key word in this prohibition is "management." Local laws concerning schools are prohibited only if they deal with "management." Two early cases stated that this referred only to conduct of the schools in imparting instruction. (Fuller v. Heath,

89 Ill. 296 (1878); Speight v. People *ex rel.* County Collector, 87 Ill. 595 (1877).) Both of these early cases concluded that laws concerning raising revenue for schools were not within the specified prohibition. Likewise, a law concerning the filling of vacancies on certain types of school boards does not come under the prohibition. (People *ex rel.* Peterson v. Pollock, 306 Ill. 358 (1922).) It follows that many local laws concerning education may be passed. (*See, e.g.,* Land Comm'rs of the Commons v. President & Trustees of the Commons, 249 Ill. 578 (1911).)

Nevertheless there are a great many cases involving school legislation, and some of them invalidate legislation which purports to be general. In almost all cases, invalidity was based on the "exclusive privilege" prohibition. (*See, e.g.,* People *ex rel.* Board of Educ. v. Read, 344 Ill. 397 (1931). See (23), *infra,* p. 221.)

(14) *Interest*: A handful of cases involved attacks on legislation dealing with interest, but in all instances the legislation survived. The ground was either that the classification was reasonable (*e.g.,* Meier v. Hilton, 257 Ill. 174 (1912)), or that the "interest" was actually a penalty, as in delinquency in payment of taxes (*e.g.,* People *ex rel.* Johnson v. Peacock, 98 Ill. 172 (1881)).

(15) *Elections*: It is sometimes unclear what evil produced one of these specific prohibitions, but, presumably, the evil was one of special ad hoc legislation. In the case of elections, the presumption would be that the type of act to be prohibited would be one changing the general law for one specific election for some specific political advantage. If this presumption is correct, it can be said that the legislature does not appear to have passed any such law. The reported cases have concerned general laws under attack on some argument of improper classification. (*See, e.g.,* Heimgaertner v. Benjamin Elec. Mfg. Co., 6 Ill. 2d 152 (1955); Larvenette v. Elliott, 412 Ill. 523 (1952).)

(16) *Realty of Minors*: The purpose of this prohibition is obvious. Many instances arise when land cannot be conveyed because someone with an interest therein is under a disability. It would be tempting, if permissible, to get the land transferred by legislative fiat. As the *History* above notes, this sort of legislation was forbidden under the 1848 Constitution. Except for two cases prior to 1890, neither of which seems particularly relevant today, no question appears to have arisen under this specific prohibition.

(17) *Fish and Game*: Whatever the original reason for inserting this prohibition, the principal result was a disastrous judicial holding that caused the drafters of the 1922 Constitution to modify the prohibition. (*Supra,* p. 206.) An act required a license for fishing with a hoop net or

seine in any state waters except Lake Michigan. The exclusion of Lake Michigan was held to make it a special act void under this prohibition. (People v. Wilcox, 237 Ill. 421 (1908).) Three judges dissented on the grounds of reasonableness of the classification, and it appears probable that the Court would now follow the dissenters. (*See* People v. Diekmann, 285 Ill. 97 (1918).)

(18) *Ferries and Toll Bridges*: No charters or licenses for ferries or toll bridges appear to have been granted by special act, or if they were, no one appears to have objected by way of a lawsuit.

(19) *Remittance of Fines*: The Supreme Court once pointed out that the purpose of this prohibition was to prevent the legislature from remitting a particular fine or penalty. (Compare the *History* of Sec. 23, *infra*, p. 226.) The court went on to note that the legislature could authorize courts to remit fines. (People v. Heise, 257 Ill. 443 (1913).) Notwithstanding a judicial explanation of the purpose of the provision, the Supreme Court some years later invalidated a law, limited by classification to Cook County, under which delinquent taxes could be paid in installments. The Court said it was a local law remitting fines, penalties and forfeitures. (People *ex rel.* Clarke v. Jarecki, 363 Ill. 180 (1936).) The Court could have said that the act was a local law regulating county affairs ((6) above), or even a special law granting an exclusive privilege ((23) below), on the theory that only Cook County taxpayers had the exclusive privilege of paying delinquent taxes on the installment plan. Apparently, litigants and courts are not overly fastidious about which local and special law slot they use. (See also discussion below concerning exclusive privileges.)

(20) *Changing Compensation:* This prohibition was probably redundant when adopted in 1870 and is certainly so under judicial interpretation of other sections of the Constitution. It would appear that anyone who could be covered by a local or special law would be covered by one of the other sections prohibiting compensation changes by general law. (See the discussion of Sec. 11 of Art. IX, *infra*, pp. 473-7.)

(21) *Changing Law of Descent:* This is a prohibition, like granting divorces, changing names, selling real estate, and remitting fines, aimed at private bills that are designed to allow a John Doe to inherit property contrary to the general rules of descent. Only two cases appear to have referred to the prohibition and both of them dealt with general laws. (*See* Jahnke v. Selle, 368 Ill. 268 (1938); Wunderle v. Wunderle, 114 Ill. 40 (1893).) The *Wunderle* case is noteworthy, however, because the situation is conceptually comparable to the *Kremers* case discussed under (10) above. In *Wunderle*, the general law prohibited any nonresident alien from acquiring real estate by descent, but certain treaties of the United States

permitted such acquisition. The Supreme Court would not go beyond the general law to consider its actual operation.

(22) *Railroad Tracks:* This prohibition was aimed at one aspect of the internal improvement abuses of the middle of the Nineteenth Century. The whole business is substantially dead today. Indeed, except for an early case in 1874, only one case appears to have referred to this prohibition, and that was a traditional action to determine the constitutionality of a new authority. (*See* People v. Chicago Transit Authority, 392 Ill. 77 (1945).) Resort to the railroad track prohibition was a makeweight and so treated by the Court.

(23) *Special Privileges*: It has been noted in several instances above that the original purpose of an enumerated prohibition was lost sight of long ago. This is particularly true of this last specific prohibition. The evil of special legislation which the 1870 delegates had in mind was the act that gave John Doe or the John Doe Corporation an exclusive franchise or privilege of some sort. In some manner that cannot be traced here – if it can be traced at all – the special privileges prohibition became a constitutional vehicle for attacking discriminatory legislation. The prohibition is, in effect, Illinois' version of the Fourteenth Amendment's equal protection clause. Indeed, the Supreme Court has said as much:

> "This provision supplements the equal-protection clause of the fourteenth amendment to the federal constitution and prevents the enlargement of the rights of one or more persons in discrimination against the rights of others." (Schuman v. Chicago Transit Authority, 704 Ill. 313, 317 (1950).)

For the reasons set forth at the beginning of this *Explanation*, it is not feasible to cover all of the many examples of discrimination in legislative treatment of individuals, associations or corporations – those found valid and those found invalid. Nor is there any need to discuss the general principles involved, for they are set out in the introductory discussion of special legislation. (*Supra*, pp. 212-15.) There is, however, one technical interpretation of the prohibition that should be noted. The word "corporation" is limited to private corporations. Exclusive privileges not otherwise invalid may be granted to public corporations. (*See* People *ex rel.* Greening v. Green, 382 Ill. 577 (1943).)

From the discussion up to now, particularly the relatively detailed analysis of several cases, it should be clear that there is almost no limit to the way in which an argument of discrimination can be turned into one of exclusive privilege. For example, if a law classifies counties or cities on a basis which the courts do not deem reasonable, and if the subject matter cannot be pushed under one of the first 22 prohibitions, it probably can be called an exclusive privilege. If the law is burdensome, the

counties or cities not covered have a privilege denied others; if the law confers a benefit, the counties or cities covered have a privilege, denied the others. If a "general" law affects some people and not others, and if courts consider the differentiation unreasonable, one group or the other has an exclusive privilege, depending on whether the law is beneficial or burdensome. Even in cases where the law treats all alike and the courts think that it is unreasonable not to differentiate, it may be possible to argue that some part of "all" gets a privilege denied to the rest of "all."

There may be occasions when it is not possible to find an exclusive privilege, but this need not stop the courts. Consider the *Monmouth* case discussed above. (*Supra,* p. 213.) That case, it will be recalled, struck down a requirement that both public bodies and private contractors pay prevailing wages to construction workers on public works. It is difficult to find an exclusive privlege here or any other specific prohibition that fits. But then the Court apparently did not either. It simply said that the act violated Section 22.

It is probably safe to say that by now the equal protection/special legislation rule is so firmly established that there is no longer a need to be precise in relating an alleged local or special act to one of the specific prohibitions. If the relation is obvious, that is all to the good. But of it is not obvious, a demonstration of unreasonable classification or discrimination will undoubtedly suffice.

In All Other Cases: In the light of the preceding paragraph, it is paradoxical to mention two flat statements that the courts consistently make. One is that there is no absolute prohibition against a local or special law on any subject not included in the 23 enumerated cases. (*See* Foutch v. Zempel, 332 Ill. 192 (1928).) The other statement is that the admonition to act by general law whenever applicable is addressed to the legislature and not to the courts. If the legislature passes a local or special law not otherwise prohibited, the courts consider such passage a conclusive and unreviewable finding by the legislature that a general law cannot be made applicable. (Wilson v. Board of Trustees, 133 Ill. 443 (1890).)

Paradoxical or not, there is good reason for the first of these rules. There are a great many occasions when a local or special act is the proper, perhaps the only, way to solve a legislative problem. The way must be cleared by a judicial affirmation that the last sentence of Section 22 means that sometimes local and special laws are permissible. (The word "local" does not appear in the last sentence, but there is no reason to believe that the 1870 Convention meant anything by this omission. In any event, the courts do not appear to have considered the omission significant). If some local and special laws are permissible, the only

logical way to accept them is to say that they may cover any subject not excluded by the 23 enumerated cases. Indeed, the last sentence begins "In all other cases . . . ."

Once the courts have come to this conclusion, it is easy for them to embrace the second rule. The assumption is that the Constitution has covered all the serious local and special legislation evils. Why then, the courts might ask themselves, should we "knock ourselves out" trying to determine "in all other cases" whether or not the legislature could have handled some problem by a general law? Moreover, the courts might sense that once they agree to review such acts, the legislature will start dressing them up in tortured language of generality. (See further discussion in *Comment* below.)

Perhaps the best way to explain the paradoxes of Section 22 is to reclassify the types of laws which may be involved. Using "local" in the geographical sense and "special" in the nongeographical sense, there are the following types of laws that can get involved with Section 22:

(a) A local law which is prohibited by one of the enumerated cases.
(b) An artificial general law which is actually a local law in a prohibited area.
(c) A local law which is not prohibited.
(d) A special law which is prohibited by one of the enumerated cases.
(e) A special law which is not prohibited.
(f) A general law which the courts find unconstitutionally discriminatory and therefore call "special."

(Note that there is no artificial general law which is actually special. So long as the courts use Section 22 to strike at discriminatory general laws, an artificial general law would fall in that category.)

Comparative Analysis

Approximately 36 states have some general prohibition against the enactment of local and special laws. Fourteen states, including most of the New England states, do not. Some of these 14 states may, however, have limited local or special law prohibitions. For example, two of the 14, Delaware and New York, prohibit legislative divorces. The new Connecticut Constitution for the first time contains an article on home rule. The local law prohibition reads:

"After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation." (Conn. Const. art. X, § 1.)

(The Constitution was effective at the end of 1965. The July 1, 1969,

effective date for prohibiting local legislation was necessary to give the General Assembly adequate time to adopt the necessary general laws.)

It is not essential to compare every one of the 23 enumerated cases with other states, but a significant sampling seems appropriate:

Changing names (2)	31 states
County seats (5)	24 states
County affairs (6)	19 states
Change of venue (9)	25 states
Municipal charters (10)	20 states
Juries (12)	22 states
Interest rates (14)	23 states
Property of minors (16)	27 states
Law of descent (21)	24 states
Exclusive privileges (23)	31 states

(Citizens Conference on State Legislatures, State Constitutional Provisions Affecting Legislatures (May 1967).)

The United States Constitution has no comparable restriction and Congress regularly passes special acts. The equal protection clause in the Fourteenth Amendment applies only to the states, but the United States Supreme Court has made the due process clause of the Fifth Amendment, which is applicable to Congressional action, serve as an equal protection clause. Thus, the United States Supreme Court has found a substitute, just as the Illinois Supreme Court found a substitute in Section 22.

The Model State Constitution has the following recommended provision:

"*Special Legislation.* The legislature shall pass no special or local act when a general act is or can be made applicable, and whether a general act is or can be made applicable shall be a matter for judicial determination." (art. IV, § 4.11.)

(See also the home rule provisions of the Model quoted in the *Comparative Analysis* of Sec. 34 of this Article and Sec. 5 of Art. X, *infra*, pp. 251 and 498.)

The Commentary to the Model states, in part:

"The distinction between general and special laws may be far from clear in any given case.

"But, even though the question as to what is a special law may not be capable of a categorical answer, it is not the major question under the common constitutional provison that no special law be passed when a general one is or can be made applicable. Rather, the problem has been when is a general law applicable and who is to determine, finally, whether or not such a general act is or can be made applicable.

"In the absence of specific constitutional directions, state courts have divided on the issue as to which branch of government is to make this determination. Some have held that this is not open to judicial review but can be decided only by the legislature, while others have held that the question is initially for the

legislature but that the courts may set aside the legislative judgment when the determination of the legislature is arbitrary, unreasonable or clearly an abuse of discretion. Still others hold the question to be a purely judicial one. In any event, it has been troublesome in some jurisdictions where the courts have wavered in the holdings from case to case." (Model State Constitution 56.)

It should be noted that the observations above (*supra*, p. 222) concerning the Illinois Supreme Court's rule that legislative determinations "In all other cases" are not reviewable is not necessarily inconsistent with the foregoing Commentary. In the absence of a large number of enumerated prohibitions, the Model's approach is the only one that assures some control over a legislature bent on evading the constitutional restriction.

Comment

It seems fair to begin by observing that Section 22, with its hundreds of judicial offspring, is a "mess." Unfortunately, in this imperfect world, it is a lot easier to criticize than it is to offer a blueprint for perfection. The way to proceed is not at all clear, and suggestions can only be tentative.

First, it seems feasible to abandon the "laundry list" approach. A constitution is supposed to be a fundamental document, and if a limitation on legislative power is appropriate, it ought to be possible to express the limitation in the form of a statement of principle. Moreover, some of the 23 enumerated cases probably were not necessary in 1870, and even more are probably so unlikely today that it would no longer occur to a legislator to propose legislation on the subject. (The Commission on the Organization of the General Assembly made the same recommendation. I.S.L., p. 13.)

Second, it seems appropriate to try to entice the courts away from using Section 22 as a substitute for or supplement to equal protection and due process. These are two fundamental rights that belong in the bill of rights. If the words "No person shall be denied the equal protection of the laws" are added to the bill of rights, either as a separate section or as an addition to Section 2 thereof (*supra*, p. 9), a first step will have been taken.

Third, it would be advisable to keep "local" and "special" legislation separated to the maximum extent possible. If an article on local government is to be prepared, combining county government and new material on other local governments, all with an eye to greater home rule, then a prohibitory section on "local" legislation, using that word and not "special," would be appropriate. Such a prohibitory section could take any of many forms — there are a number of "models" around. The only suggestion to be made here is to keep it simple. It should be either

a flat prohibition with a minimum of exceptions as in the Connecticut example quoted above, or a general statement as in the Model provision concerning "special" legislation quoted above, or as in a flat prohibition with a proviso that the legislature may provide for different treatment on the basis of reasonable classification of local governments.

Finally, there remains the problem of real special legislation. One would like to believe that this sort of legislation would not be revived if there were no prohibition, but it probably is not safe, or in any event not worth the gamble, to experiment with this sort of legislative freedom. (The point here is that real special legislation has not been a problem since 1870, whereas local legislation in artificial classification disguises has. If there were no restraints on the latter, the legislature might stop struggling with classifications and simply pass local legislation from time to time, but they might not do the same in such areas as granting divorces, changing names, changing the law of descent, and transferring real property—cases of real special legislation.) The cautious solution is a provision like that of the Model quoted above, including the words of subjecting applicability of general laws to judicial determination. There is, of course, no assurance that the courts would not gallop through such a hole, dragging the old pseudo-special legislation rules with them. (One can rest assured that litigants would try to get the courts to do just that.) But if the problem of local and special legislation is handled in a comprehensive fashion as suggested here, with a well-documented explanation of the four interrelated steps — (1) abandonment of enumerated cases, (2) substitution of equal protection, (3) coverage of local legislation in the local government article, and (4) the limited general prohibition on special legislation — the courts might go along.

Release of Nonstate Debts Prohibited

Sec. 23. The General Assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State or to any municipal corporation therein.

History

This section dates from 1870. Notwithstanding the breadth of the section, the debate on it in the Convention revealed that the section was aimed at one specific abuse. It was argued that tax collectors, instead of remitting collections promptly, would retain the money and use it improperly. If through such use it was lost, the collectors would fraudulently establish a robbery and then seek relief for themselves and their sureties by private bill. Several delegates protested that the proposed section was too harsh, for, it was argued, there would be no relief for the collector who was in fact robbed through no fault of his own. These