No. 129263

IN THE
SUPREME COURT OF ILLINOIS

ROBERT CAMMACHO, JR.,
JAMES A. JONES, BRUCE D. OLIVER,
DAVID B. SPEER, JORGE URBINA,

Plaintiffs/Appellees,

v.

CITY OF JOLIET,

Defendant/Appellant.

On Petition for Leave to Appeal from the Appellate Court of Illinois
Third Judicial District, No. 3-21-0591
There Heard on Appeal from the Circuit Court of the Twelfth Judicial
Circuit, Will County, Illinois,
No. 2021 MR 1420
The Honorable John C. Anderson, Judge Presiding

BRIEF OF AMICUS CURIAE THE CITY OF CHICAGO

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INTEREST OF *AMICUS CURIAE*

Plaintiffs violated a City of Joliet ordinance that caps the weight rating of vehicles operated on city roads. After Joliet administratively adjudicated plaintiffs' offenses, the appellate court ruled that a provision of the Illinois Municipal Code precludes home rule municipalities from administratively adjudicating those offenses. The City of Chicago has a direct interest in this Court's review of the appellate court's ruling because Chicago is a home rule unit with its own system of administrative adjudication of vehicle offenses. Moreover, Chicago has a similar ordinance limiting the weight of vehicles. And, in a case on which the Third District relied here, the First District considered Chicago's ordinance and similarly misapplied principles governing home rule authority and misconstrued the same section of the Illinois Municipal Code. See Catom Trucking, Inc. v. City of Chicago, 2011 IL App (1st) 101146. Chicago submits this brief to explain the appellate court's error in this case and that Catom should be overruled.

STATEMENT OF FACTS

Section 1-2.1-2 of the Illinois Municipal Code

On January 1, 1998, the General Assembly enacted division 1-2.1 ("Division 2.1") of the Illinois Municipal Code. Division 2.1 provides for the administrative adjudication of "any violation of a municipal ordinance, except for (i) proceedings not within the statutory or the home rule authority of

municipalities; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code." 65 ILCS 5/1-2.1-2 (footnotes omitted). Decisions from such an administrative adjudication system are enforceable "in the same manner as a judgment entered by a court of competent jurisdiction." 65 ILCS 5/1-2.1-8(b). Division 2.1 does "not preempt municipalities from adopting other systems of administrative adjudication pursuant to their home rule powers." 65 ILCS 5/1-2.1-10.

The bill's sponsor, then-Senator Obama, explained that municipalities already possessed the power to administratively adjudicate municipal code violations, but there was "no enforcement mechanism[ ] to give these administrative adjudication processes some teeth." Senate Tr. 90th Session, 26th day, March 19, 1997, at 114.[1] With no way to enforce their judgments, municipalities had to file actions in circuit court to obtain an enforceable judgment. See Village of Lake in Hills v. Niklaus, 2014 IL App (2d) 130654, ¶ 21. As a result, municipalities were "not really using the administrative adjudication system," resulting in "an often overburdened court docket" in the

[1] The senate transcripts are included in the appendix to this brief. They may be found at https://www.ilga.gov/senate/transcripts/strans90/ST031997.pdf.

state's circuit courts. Senate Tr. 90th Session, 26th day, March 19, 1997, at 113-114.

To relieve this burden on the courts, the legislature enacted Division 2.1 to give municipalities a tool to enforce their judgments. Senate Tr. 90th Session, 26th day, March 19, 1997, at 114. Under the Illinois Constitution, any statute that limits the "power or function of a home rule unit not exercised or performed by the State" must be "approved by the vote of three-fifths of the members" of the General Assembly. Ill. Const. art. VII, § 6(g). During the floor debates on Division 2.1, the House Parliamentarian explained that the bill could be passed by a simple majority vote because it was "permissive and [did] not preempt" home rule authority. House Tr. 90th Session, 60th day, May 14, 1997, at 34, 42.

This Lawsuit

Joliet administratively adjudicates violations of ordinance 19-21, which prohibits the operation of vehicles over a certain weight rating on its roads. Cammacho v. City of Joliet, 2022 IL App (3d) 210591, ¶ 3. Plaintiffs are commercial drivers who drove on city roads in violation of ordinance 19-21. Id. ¶ 4. An administrative hearing officer determined that plaintiffs were liable for the violations and imposed a fine against each plaintiff. Id. Plaintiffs filed a complaint for administrative review in circuit court, alleging that Joliet did not have jurisdiction to administratively adjudicate offenses against ordinance 19-21. Id. ¶ 5. The circuit court affirmed the

administrative hearing officer's ruling. Id. On appeal, the Third District reversed. Id. ¶ 19. The court determined that section 1-2.1-2 "prohibits" home rule municipalities from administratively adjudicating violations of a "traffic regulation governing the movement of vehicles," and that ordinance 19-21 "governs the movement of vehicles." Id. ¶¶ 9, 12. On that basis, the appellate court concluded that Joliet lacked jurisdiction to administratively adjudicate violations of ordinance 19-21. Id. ¶ 12. Joliet appeals.

ARGUMENT

Joliet properly exercised its home rule authority to administratively adjudicate violations of its own ordinance governing the weight rating of vehicles. This Court should reverse the Third District's ruling that section 1-2.1-2 of the Illinois Municipal Code preempts home rule authority and prohibits administrative adjudication of traffic offenses simply because they involve a vehicle in motion. The appellate court's interpretation of section 1-2.1-2 places an unintended and unconstitutional limitation on home rule powers. Furthermore, it ignores the meaning of defined terminology in the Illinois Vehicle Code and Illinois Administrative Code. The appellate court's approach could result in circuit courts being flooded with additional traffic cases each year, undermining the efficiency and utility these administrative adjudication systems were designed to accomplish. As we explain below, as a matter of law, section 1-2.1-2 does not preempt home rule authority at all.

Regardless, it would not preclude Joliet from administratively adjudicating offenses against ordinance 19-21.

I. SECTION 1-2.1-2 DOES NOT PREEMPT HOME RULE AUTHORITY.

The 1970 Constitution grants home rule units the authority to "exercise any power and perform any function pertaining to [their] government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare." Ill. Const. art. VII, § 6(a). The "powers and functions of home rule units shall be construed liberally." Ill. Const. art. VII, § 6(m).[2]

This Court has explained that home rule units enjoy "the broadest powers possible" under the constitution. Scadron v. City of Des Plaines, 153 Ill.2d 164, 174 (1992). "[T]he basic grant of home rule power set forth in section 6(a) is deliberately broad and imprecise as a means of affording great flexibility." Blanchard v. Berrios, 2016 IL 120315, ¶ 27. Home rule municipalities have "the same powers as the sovereign" and may exercise

[2] Previously, municipalities possessed "only those powers expressly granted, powers incident to those expressly granted, and powers indispensable to the accomplishment of the declared objects and purposes of the municipal corporation." Pesticide Public Policy Foundation v. Village of Wauconda, 117 Ill. 2d 107, 112 (1987). But the 1970 Constitution completely inverted that dynamic, "grant[ing] large municipalities and some counties broad powers of self-government," such that home rule units now "possess most governmental powers except those specifically denied to them by statute." David Baum, A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations, 1972 U. Ill. L.F. 137, 138.

them concurrently with the State. Palm v. 2800 Lake Shore Drive Condominium Association, 2013 IL 110505, ¶ 32. Moreover, home rule powers come "directly from the constitution," and "do[ ] not depend on a grant of authority by the General Assembly." Lintzeris v. City of Chicago, 2023 IL 127547, ¶ 21.

Pursuant to its home rule authority, Joliet uses an administrative system to adjudicate violations of its ordinance regarding the weight rating of vehicles on its roads. Cammacho, 2022 IL App (3d) 210591, ¶ 3. No one disputes that Joliet's enforcement of its own ordinances is a function pertaining to Joliet's government and affairs. Its administrative adjudication of ordinance 19-21 violations, therefore, fits squarely within the home rule authority authorized in article VII, section 6(a) of the Illinois Constitution.

Where, as here, a function comes within a municipality's home rule powers, the General Assembly may only "preempt the exercise of a home rule unit's powers by expressly limiting that authority." Lintzeris, 2023 IL 127547, ¶ 22. Any such limitation requires a statute specifically preempting the power in question. Pursuant to the Statute on Statutes, "[n]o law enacted after January 12, 1977, denies or limits any power or function of a home rule unit . . . unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit." 5 ILCS 70/7. And where, as here, the power in question – the

enforcement of local ordinances – has not been exercised by the state, the constitution requires that any statute purporting to preempt home rule authority be approved by 60% of the members of each house in the legislature. Ill. Const. art. VII, § 6(g). Finally, the Home Rule Note Act requires that "[e]very bill that denies or limits any power or function of a home rule unit . . . have prepared for it before second reading in the house of introduction a brief explanatory note that includes a reliable estimate of the probable impact of the bill on the powers and functions of home rule units." 25 ILCS 75/5.

The General Assembly has not enacted a statute that satisfies these requirements to limit Joliet's home rule authority to adjudicate violations of ordinance 19-21. Plaintiffs rely on section 1-2.1-2, but that statute falls well short of accomplishing preemption. To begin, it contains no preemptive language. In its entirety, it states:

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

65 ILCS 5/1-2.1-2. The General Assembly included no language specifically preempting home rule authority to administratively adjudicate municipal

code violations. In fact, it expressly stated that Division 2.1 does *not* preempt a home rule unit's power to do so: "[Division 2.1] shall not preempt municipalities from adopting other systems of administrative adjudication pursuant to their home rule powers." 65 ILCS 5/1-2.1-10.

If the General Assembly meant to preempt home rule authority, it knew how to do so in clear terms. In fact, the Illinois Municipal Code contains at least 55 instances of express preemption. See, e.g., 65 ILCS 5/1-2-1.2 ("This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution."); 65 ILCS 5/1-2-1.5 ("This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution."); 65 ILCS 5/8-3-19(g) ("A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution."); 65 ILCS 5/8-11-1 ("The changes made to this Section by this amendatory Act of the 101st General Assembly are a denial and limitation of home rule powers and functions under subsection (g) of

Section 6 of Article VII of the Illinois Constitution.").[3] Section 1-2.1-2 conspicuously lacks any comparable preemption language.

In sum, section 1-2.1-2 utterly fails to preempt Joliet's home rule authority to administratively adjudicate violations of ordinance 19-21. The appellate court, however, erroneously ruled that section 1-2.1-2 "creates an exception to the general authority that a municipality has to create a system of administrative adjudication." Cammacho, 2022 IL App (3d) 210591, ¶ 9. It did so without even acknowledging, much less applying, the constitutional and statutory requirements and this Court's precedent governing preemption of home rule authority.[4] When these principles are applied, it is clear the General Assembly has not, through section 1-2.1-2 or any other statute,

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[3] There are at least 51 additional examples of preemptive language in the Illinois Municipal Code. See 65 ILCS 5/1-1-12(c); id. 5/3.1-10-17(c); id. 5/3.1-10-51(e); id. 5/3.1-15-35; id. 5/6-3-8; id. 5/8-3-17; id. 5/8-8-3(g); id. 5/8-11-5; id. 5/8-11-6a; id. 5/8-11-6b(a); id. 5/8-11-21(b); id. 5/8-12-24; id. 5/8-13-20; id. 5/10-1-7(l); id. 5/10-1-7.1(a); id. 5/10-1-7.3; id. 5/10-1-14; id. 5/10-1-18.2; id. 5/10-2.1-4; id. 5/10-2.1-6.3(a); id. 5/10-3-12(c); id. 5/10-4-2(d-20); id. 5/10-4-2.1; id. 5/10-4-2.2; id. 5/10-4-2.3; id. 5/10-4-2.5; id. 5/10-4-2.8; id. 5/10-4-5; id. 5/10-4-6; id. 5/10-4-10; id. 5/11-1-12; id. 5/11-5-9; id. 5/11-5-11(c); id. 5/11-5.1-2(c); id. 5/11-10-1(c); id. 5/11-13-1; id. 5/11-13-1.5; id. 5/11-13-26(b); id. 5/11-19-1(e); id. 5/11-20-6.5(c); id. 5/11-20-16(a); id. 5/11-39-3(d); id. 5/11-40-2a; id. 5/11-40-2b; id. 5/11-42-11(c); id. 5/11-42-11.05(l); id. 5/11-42.1-1(a); id. 5/11-55-2; id. 5/11-80-9; id. 5/11-101-3(c); and id. 5/11-124-1(d). The sheer length of this list demonstrates that the General Assembly deliberately chose not to include preemptive language in section 1-2.1-2.

[4] The appellate court in Catom similarly ignored the requirements for preemption.

preempted home rule authority to administratively adjudicate ordinances establishing vehicular weight restrictions.

And even if section 1-2.1-2 were ambiguous about preemption, that would only prove the point that there is insufficient express language to accomplish that end, thus ending the inquiry. In the context of home rule preemption, given the specific constitutional and statutory requirements necessary for the legislature to preempt home rule units' sovereign powers, any ambiguity must be resolved in favor of preserving home rule authority. See, e.g., Palm, 2013 IL 110505, ¶ 30 ("The Illinois Constitution further provides that the '[p]owers and functions of home rule units shall be construed liberally."). Moreover, the legislative history of Division 2.1 shows that the legislature never intended for the statute to have preemptive effect. The floor debates in both the House and the Senate reveal that Division 2.1 *expands* municipal power by codifying a new tool to enforce administrative judgments. Senate Tr. 90th Session, 26th day, March 19, 1997, at 113-115; House Tr. 90th Session, 60th day, May 14, 1997, at 29. The House Parliamentarian confirmed that it is "permissive and it does not preempt" home rule authority. House Tr. 90th Session, 60th day, May 14, 1997, at 34. On that basis, the House Parliamentarian called for a majority vote to pass section 1-2.1-2, rather than the supermajority vote required by article VII, section 6(g) of the Constitution. Id. at 34, 42. Also, the statute did not have a

note explaining its effect on home rule units, as required by the Home Rule Note Act, 25 ILCS 75/5.

Given the lack of express language limiting home rule power, as well as the General Assembly's clear intent that Division 2.1 be permissive rather than preemptive, section 1-2.1-2 does not preempt home rule authority.[5]

II. SECTION 1-2.1-2 DOES NOT PROHIBIT THE ADMINISTRATIVE ENFORCEMENT OF ORDINANCE 19-21.

As an independent basis for reversal, the appellate court's decision rests on a fundamental misunderstanding of a key phrase in section 1-2.1-2: "traffic regulation governing the movement of vehicles." That phrase is integrally linked to the point system the Secretary of State uses to keep track of violations that could result in the suspension or revocation of driving privileges. In light of that context, it is clear that section 1-2.1-2 is directed at ordinance violations involving conduct that, if adjudicated in state court, would be reported to the Secretary of State for that purpose.

Section 1-2.1-2 contains two exceptions (subsections (i) and (ii)). Subsection (ii) provides that the type of adjudication system contemplated by

[5] To the extent that Division 2.1 expanded the authority of local governments to use additional tools to enforce administrative judgments, see 65 ILCS 5/1-2.1-8, that is irrelevant to plaintiffs' challenge here. Plaintiffs attack Joliet's authority to administratively adjudicate violations, not any particular tool for collecting administrative judgments after violations are adjudicated. Regardless, for the same reasons we explain in the next section, any limits on the General Assembly's authorization of those expanded enforcement tools would not apply here.

Division 2.1 can adjudicate "any violation of a municipal ordinance, except for . . . 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(ii) ("subsection (ii)").[6] Joliet's ordinance 19-21 does not apply to such offenses.

[6] In Catom, the parties disputed whether subsection (ii) itself contains two exceptions, and the court decided that it did. The Third District did the same. This court need not resolve that question here, since no possible exception applies to Joliet's ordinance, as we explain. But, also, that ruling was erroneous; subsection (ii) should be construed to contain one exception. And that exception must be interpreted narrowly. Ill. Const. art. VII, § 6(m); see also Lintzeris, 2023 IL 127547, ¶ 35 (statutes should be interpreted in light of the constitutional requirement that "the powers and functions of home rule units are to be construed liberally"); City of Chicago v. Roman, 184 Ill. 2d 504, 516 (1998) (the purpose of section 6(i)'s specificity requirement is "to eliminate or at least reduce to a bare minimum the circumstances under which local home rule powers are preempted by judicial interpretation of unexpressed legislative intention."). Subsection (ii) references two overlapping types of offenses: (1) offenses against traffic regulations governing the movement of vehicles; and (2) reportable offenses under Section 6-204 of the Vehicle Code. Section 6-204 refers broadly to all offenses against the Vehicle Code, with few exceptions. In contrast, there are relatively few traffic regulations governing the movement of vehicles; and offenses against these regulations are all reportable under Section 6-204. Construing subsection (ii) in the way that most narrowly limits home rule authority, only offenses against traffic regulations governing the movement of vehicles, which are always required to be reported under section 6-204, are covered by subsection (ii)'s exception.

A. Ordinance 19-21 Is Not A Traffic Regulation Governing The Movement Of Vehicles.

To begin, the appellate court erred in concluding that violations of Joliet's ordinance are offenses against a "traffic regulation governing the movement of vehicles." Cammacho, 2022 IL App (3d) 210591, ¶ 12. The appellate court relied on the First District's holding in Catom that an ordinance constitutes a "traffic regulation governing the movement of vehicles" if the ordinance restricts overweight vehicles from being "'operated or *moved upon*'" the streets. Id. ¶ 13 (quoting Catom, 2011 IL App (1st) 101145, ¶ 18). In Catom, the court found it significant that the ordinance applied, not just to "stationary vehicles," but also moving ones. Catom, 2011 IL App (1st) 101145, ¶ 19. Similarly, in this case, the court relied on the fact that the plaintiffs were "cited while driving" the overweight vehicles. Cammacho, 2022 IL App (3d) 210591, ¶ 13. Thus, in both cases, the appellate court concluded that the mere fact that the overweight vehicles were moving at the time they violated the respective ordinances meant that the ordinances were "traffic regulation[s] governing the movement of vehicles" within the meaning of subsection (ii). That is incorrect.

In both cases, the appellate court ignored that "traffic regulation governing the movement of vehicles" is a defined term of art that appears throughout the Vehicle Code. See, e.g., 625 ILCS 5/6-206(a)(2) (the Secretary of State may suspend or revoke the driving privileges of any person who has

been convicted of "not less than 3 offenses against traffic regulations governing the movement of vehicles").[7] The Illinois Administrative Code defines "traffic regulation governing the movement of vehicles" as "a violation for which points are assigned pursuant to 92 Ill. Adm. Code 1040.20." 92 Ill. Adm. Code 1030.1. So, for example, points are assigned to the offenses of operating a motor vehicle while using an electronic communication device, and supervising a minor driver while intoxicated, each of which are classified as "traffic regulations governing the movement of vehicles." 625 ILCS 5/12-610.2(c); id. 5/11-507(b).[8] The points that are assigned to violations are an

[7] See also 625 ILCS 5/11-208.8(c) (automated speeding tickets are not evidence of "a violation of a traffic regulation governing the movement of vehicles"); id. 5/6-110(a-3) (drivers who commit "offense[s] against traffic regulations governing the movement of vehicles" in the six months prior to their 18th birthday are subject to restrictions on their license); id. 5/6-107(d) (no graduated driver's license shall issue to any applicant under 18 years of age who has committed an "offense against traffic regulations governing the movement of vehicles"); id. 5/12-610.1(d) (drivers who commit "an offense against traffic regulations governing the movement of vehicles" in the six months prior to their 18th birthday may not drive a vehicle while using a wireless phone); id. 5/16-108 (police must forward to the Secretary of State any citation issued to drivers with diplomatic immunity who "violat[e] a traffic regulation governing the movement of vehicles under this Code or a similar provision of a local ordinance"); id. 5/11-208.6(j) (traffic violations captured by red light cameras are "not a violation of a traffic regulation governing the movement of vehicles").

[8] The history of 625 ILCS 5/12-610.2 is particularly helpful in understanding the meaning of the phrase "traffic regulation governing the movement of vehicles." That statute prohibits drivers from operating a motor vehicle on a roadway while using an electronic communication device. Id. When the statute was first enacted in 2010, it stated that a "violation of this [statute] is an offense against traffic regulations governing the movement of vehicles." P.A. 96-130, eff. Jan. 1, 2010. But in 2014, the General Assembly revised 625

important part of how the Secretary of State monitors driving privileges. When a driver is convicted of an offense that carries points, the offense must be reported to the Secretary of State so the points can be reported on the offender's driving record. 92 Ill. Adm. Code 1040.20. The Secretary of State may suspend or revoke the license of anyone who commits "3 offenses against traffic regulations governing the movement of vehicles" within a one-year period. 625 ILCS 5/6-206(a)(2). The total number of points associated with those three offenses determines whether the person's license is suspended and, if so, for how long. 92 Ill. Adm. Code 1040.30. A point total that is sufficiently high results in the revocation of a person's license. Id.

Critically, not all traffic regulations that apply when vehicles are in motion are assigned points. And, thus, contrary to Catom and the decision below, not all of those regulations are "traffic regulations governing the movement of vehicles" within the meaning of the Vehicle Code and Illinois Administrative Code. For instance, a speeding violation captured by an

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ILCS 5/12-610.2 to state that only a "second or subsequent violation of this [statute] is an offense against traffic regulations governing the movement of vehicles." P.A. 98-506, eff. Jan. 1, 2014. Finally, in 2019, the General Assembly again revised 625 ILCS 5/12-610.2 so that all violations of that statute are now considered offenses against traffic regulations governing the movement of vehicles. 625 ILCS 5/12-610.2(c). The fact that the General Assembly has gone back and forth regarding whether this conduct is an offense against a "traffic regulation governing the movement of vehicles" demonstrates that the meaning of that phrase does not depend on whether a vehicle is in motion at the time of an offense.

automated traffic camera involves a violation that occurs while the vehicle is moving, but it is expressly "*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." 625 ILCS 5/11-208.8 (emphasis added). Likewise, a red-light violation captured by an automated traffic camera "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. at 5/11-208.6(j) (emphasis added). This plainly demonstrates that the phrase "traffic regulation governing the movement of vehicles" is used as a term of art in the Vehicle Code and Illinois Administrative Code, and does not encompass every traffic offense involving the movement of a vehicle.

Section 1-2.1-2 incorporates, in subsection (ii), the exact phrase "traffic regulation governing the movement of vehicles." Where, as here, "a term has a settled legal meaning, the courts will normally infer that the legislature intended to incorporate the established meaning." People v. Smith, 236 Ill. 2d 162, 167 (2010). Moreover, "the General Assembly is presumed to know existing law including the body of law existing in administrative regulations." Citizens Utilities Co. of Illinois v. Illinois Pollution Control Board, 133 Ill. App. 3d 406, 409 (3d Dist. 1985) (citation omitted). Thus, the General Assembly, in drafting subsection (ii), is presumed to have known about the well-settled meaning of this term and to have intended to incorporate that meaning.

Thus, when subsection (ii) refers to a "traffic regulation governing the movement of vehicles," it refers to conduct that is reportable to the Secretary of State under the Vehicle Code. This only makes sense. The entire purpose of the subsection (ii) exception is to prevent the administrative adjudication process from circumventing the reporting of conduct to the Secretary of State. See 625 ILCS 5/6-204. The General Assembly treats offenses that carry points differently because they must be adjudicated in court so that the clerk of the court can report convictions to the Secretary of State. See id. Only then can the Secretary of State determine whether a driver is unfit to "safely operate [a] motor vehicle in a manner conducive to the public safety and welfare," 92 Ill. Adm. Code 1040.10(b), and suspend or revoke the driver's license, 625 ILCS 5/6-206(a)(2). Allowing such offenses to be adjudicated administratively would mean that they would not be reported to the Secretary of State, thereby allowing unsafe drivers to maintain their driving privileges. Conversely, traffic offenses that are not assigned points do not impact a person's driving record. Therefore, the General Assembly would have had no interest in preventing municipalities from administratively adjudicating them, because such offenses do not need to be reported to the Secretary of State.

Joliet's ordinance is not a "traffic regulation governing the movement of vehicles." That is because the ordinance does not involve conduct that would be assigned points under the Secretary of State's reporting system.

Ordinance 19-21 makes it "unlawful to operate any vehicle in excess of twenty-four thousand (24,000) pounds (twelve (12) tons), or any vehicle with a gross vehicle weight rating greater than twenty-four thousand (24,000) pounds (12 tons), on any non-designated city road." Joliet Code of Ordinances § 19-21(a). The Vehicle Code also contains some weight regulations. See, e.g., 625 ILCS 5/15-111. But it does not designate them as "traffic regulations governing the movement of vehicles," and those offenses do not result in any points being added to a driver's license. See 92 Ill. Adm. Code 1040.20. Therefore, ordinance 19-21 is not a traffic regulation governing the movement of vehicles, and subsection (ii) did not prevent Joliet from administratively adjudicating plaintiffs' offenses.

B. A Violation Of Ordinance 19-21 Is Not A Reportable Offense Under Section 6-204.

Nor is a violation of Joliet's ordinance a "reportable offense under Section 6-204 of the Illinois Vehicle Code," 65 ILCS 5/1-2.1-2(ii).

This reporting serves a similar purpose to the point system. Section 6-204 requires the circuit court clerk to provide reports to the Secretary of State when "persons [are] found guilty of . . . traffic violations which this Code recognizes as evidence relating to unfitness to safely operate motor vehicles." 625 ILCS 5/6-204(a). It was enacted "[f]or the purpose of providing to the Secretary of State the records essential to the performance of the

Secretary's duties under this Code to cancel, revoke or suspend the driver's license and privilege to drive motor vehicles." Id.

Section 6-204 makes only certain offenses reportable. 625 ILCS 5/6-204(a). Under subsection (a)(1), the circuit court clerk must report convictions of any offense "for which this Code makes mandatory the cancellation or revocation of the driver's license or permit." Id. Under subsection (a)(2), the clerk must report convictions of any offense under the Vehicle Code or a similar municipal ordinance "other than regulations governing . . . weights of vehicles, and excepting" certain enumerated offenses. Id.

The weight offenses at issue in this case do not fall into either of these categories. First, under subsection (a)(1), the plaintiffs' offenses do not mandate the cancellation or revocation of their driver's licenses. As for subsection (a)(2), that provision expressly states that offenses against regulations "governing . . . the weights of vehicles" are not reportable. 625 ILCS 5/6-204(a)(2). Additionally, offenses against section "15-111 (weights)" of the Vehicle Code and similar municipal ordinances are not reportable. Id. Here, the plaintiffs violated ordinance 19-21, which prohibits vehicles over a certain weight rating from operating on city roads. Joliet Code of Ordinances § 19-21(a). This is an ordinance governing the weights of vehicles; therefore, a violation is not reportable under subsection (a)(2). 625 ILCS 5/6-204(a)(2).

Plaintiffs argued below that section 6-204 requires reporting of overweight truck offenses because it requires reporting of "all offenses committed in a commercial motor vehicle, or by a CDL holder," Brief of Plaintiffs-Appellants, No. 2-21-0591 (Ill. App. Ct.), 14 ("Plaintiffs App. Ct. Br.") (emphasis in original). They cited the following language from section 6-204(a)(2): "The reporting requirements of this subsection (a) apply to all violations listed in [subsection (a)(1) and (subsection (a)(2)], excluding parking violations, when the driver holds a CLP or CDL, regardless of the type of vehicle in which the violation occurred, or when any driver committed the violation in a commercial motor vehicle." 625 ILCS 5/6-204(a)(2).[9]

But the plain language of section 6-204 disproves plaintiffs' theory. It expressly excludes from reporting at least one offense that involves *only* commercial vehicles, namely, offenses against 625 ILCS 5/11-1419.01, which provides: "[i]f a commercial motor vehicle is found operating in Illinois without displaying a required valid single trip permit, the operator is guilty of a petty offense." A "single trip permit," in turn, applies only to "commercial motor vehicle[s] operated in Illinois in the course of interstate traffic by a motor carrier not holding a motor fuel tax license issued under" the Motor Fuel Tax Law. 35 ILCS 505/13a.5. Plaintiffs' interpretation would

[9] A CLP is a commercial learner's permit. A CDL is a commercial driver's license.

render the single-trip permit exception meaningless. "Words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute so that, if possible, no term is rendered superfluous or meaningless." Land v. Board of Education of City of Chicago, 202 Ill. 2d 414, 422 (2002). The better interpretation is that section 6-204(a)(2)'s reference to reporting requirements applying to all listed violations (except parking), "when the driver holds a CLP or CDL, regardless of the type of vehicle in which the violation occurred, or when any driver committed the violation in a commercial motor vehicle," 625 ILCS 5/6-204(a)(2), simply clarifies that the reporting requirements of section 6-204 – which, again, exclude weight violations – apply even when the offense was committed by a commercial driver in a non-commercial vehicle, or in a commercial vehicle by any driver.[10]

Because plaintiffs' offenses were not reportable under section 6-204, subsection (ii) of section 1-2.1-2 did not prevent Joliet from administratively adjudicating them.[11]

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[10] In general, only commercial drivers are permitted to drive commercial vehicles. 625 ILCS 5/6-507(a). But the Vehicle Code includes offenses involving commercial vehicles that can be committed by any person, regardless of whether that person is a commercial driver. See, e.g., 625 ILCS 5/6-526(a) ("A driver may not engage in texting while driving a commercial motor vehicle.").

[11] Plaintiffs further argued in the appellate court that the General Assembly made all offenses involving commercial vehicles or CDL-holders reportable in 2012 in response to the federal government's passage of P.L. 112-141, which, according to plaintiffs, "conditioned the receipt of federal highway funds upon state compliance with certain reporting requisites . . . [such as] requir[ing]

C. An Interpretation That Requires Only Violations That Carry Points And Reporting Requirements To Be Adjudicated In Court Is Logical.

Offenses carrying points and reporting requirements need to be adjudicated in court, rather than administratively, because the circuit court clerk must report them to the Secretary of State so that the Secretary can assign points to an offender's driving record. See 625 ILCS 5/6-204; 625 ILCS 5/6-206(a)(2). Therefore, it is logical that such offenses would be excluded from administrative adjudication. Plaintiffs' interpretation, in contrast, would defeat the purpose of the statute and overwhelm the courts with vehicle-related litigation.

This is exactly what the General Assembly wanted to avoid when it created Division 2.1. Senate Tr. 90th Session, 26th day, March 19, 1997, at 113-14. The bill's sponsor explained that the bill was intended to "give the[ ] administrative adjudication processes some teeth" so that municipalities

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states to report violations of CDL holders and violations committed in commercial motor vehicles." Plaintiffs App. Br. 14. There are several things wrong with this argument. First, the portion of section 6-204(a)(2) addressing commercial vehicles and CDL-holders has been in place since 2005 – well before the passage of P.L. 112-141. See P.A. 94-307, § 5, eff. Sept. 30, 2005. Second, 49 USC § 31311(a) – the federal statute to which plaintiffs refer – does not require states to "report violations of CDL holders and violations committed in commercial motor vehicles," as plaintiffs claim. Plaintiffs App. Br. 14. It merely requires states to report traffic offenses committed by an out-of-state driver to the state that issued the driver's license if (1) the driver holds a CDL issued by another state, or (2) the driver is operating a commercial vehicle without a CDL. 49 USC § 31311(a)(9).

would not "continue to simply overburden the courts." Id. at 114. The General Assembly intended it to "permit[ ] municipalities across Illinois to enforce all civil [m]unicipal [c]ode violations through a system of administrative adjudication as an alternative to court prosecution." Id. at 113. That way, local governments could "remov[e] minor cases from an often overburdened court docket." Id.

For these reasons, even on plaintiffs' view that section 1-2.1-2 preempts home rule authority, it does not preclude Joliet from administratively adjudicating plaintiffs' offenses.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Third District.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages.

/s/ Alexandra E. Weiss
ALEXANDRA E. WEISS, Attorney

CERTIFICATE OF SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing Brief of *Amicus Curiae* of the City of Chicago was electronically filed with the officer of the Clerk of Court using the File and Serve Illinois system and served on all counsel of record via File & Serve Illinois on July 12, 2023.

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APPENDIX

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That request is in order. Senator Demuzio has requested a verification of the affirmative roll call. Will all Members be in their seats. Madam Secretary, read the affirmative votes, please.

ACTING SECRETARY HAWKER:

The following Members voted in the affirmative: Berman, Burzynski, Butler, Carroll, Cronin, DeLeo, Dudycz, Farley, Fawell, Fitzgerald, Geo-Karis, Halvorson, Hendon, Karpiel, Klemm, Lauzen, Link, Mahar, Molaro, Obama, O'Malley, Parker, Peterson, Radogno, Rauschenberger, Sieben, Smith, Syverson, Viverito, Walsh, Weaver and Mr. President.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Demuzio, do you question the presence of any Member?

SENATOR DEMUZIO:

Senator Watson.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Watson on the Floor? Senator Watson on the Floor? He's in -- he didn't vote, Senator Demuzio.

SENATOR DEMUZIO:

Well, I -- I wasn't asking that question, I just wanted to know... Senator Cronin?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Cronin is in his seat.

SENATOR DEMUZIO:

That's enough.

PRESIDING OFFICER: (SENATOR MAITLAND)

On a verified roll call there are 33 Ayes, 9 {sic} (19) Nays, no Members voting Present. Senate Bill 570, having received the required constitutional majority, is declared passed. Top of Page 8 is Senate Bill 574. Senator Obama. Read the bill, Madam Secretary.

ACTING SECRETARY HAWKER:

Senate Bill 574.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Obama.

SENATOR OBAMA:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. Senator 574 is a good bill for local governments by removing minor cases from an often overburdened court docket. This bill permits municipalities across Illinois to enforce all civil Municipal Code violations through a system of administrative adjudication as an alternative to court prosecution. This bill will help protect public safety and welfare by expediting the prosecution and correction of Municipal Code violations. It'll also help with issues such as broken windows and small problems that effect the quality of life in the community. I know of no opposition to the bill. It passed out of committee unanimously, and I would urge a favorable roll call. Thank you very much.

PRESIDING OFFICER: (SENATOR MAITLAND)

Is there discussion? Senator Hawkinson.

SENATOR HAWKINSON:

Thank you -- thank you, Mr. President. Will sponsor yield for question?

PRESIDING OFFICER: (SENATOR MAITLAND)

Indicates he will yield, Senator Hawkinson.

SENATOR HAWKINSON:

Senator, we have ongoing discussions and a shell bill moving on the subject of "P-Tickets" and you're familiar with what those are. This bill doesn't impact on that subject at all, does it? It just affects currently valid municipal ordinances?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Obama.

SENATOR OBAMA:

That is correct. It has no impact at all on the "P-Ticket" issue.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Sponsor yield for a question?

PRESIDING OFFICER: (SENATOR MAITLAND)

Indicates he will yield, Senator Geo-Karis.

SENATOR GEO-KARIS:

I can't -- I didn't get -- quite get from your explanation just exactly what you're allowing the municipalities to do to help out in those cases of small infractions.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Obama.

SENATOR OBAMA:

What -- what'll be allowed now -- we already have a system whereby municipalities can use the system of administrative adjudication to process minor building violations, code violations and so forth. Although this does not include traffic citations which are dealt with entirely separately. The problem is, apparently, that there are no enforcement powers -- no enforcement mechanisms to give these administrative adjudication processes some teeth. And so as a consequence, people are ending up not really using the administrative adjudication system that's already been set up. Instead they continue to simply overburden the courts. And so one of the concerns in terms of court watchers, as well as the Chief Judge in Cook County, is -- is that they can't use them unless administrative adjudication process actually has some teeth so that we can actually start processing these through administrative hearing process.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Does this apply statewide or just to Cook County?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Obama.

SENATOR OBAMA:

It -- it applies statewide, but it is optional. So the municipalities can choose to -- to adopt this -- this type of system, but there's no requirement whatsoever that they do so.

PRESIDING OFFICER: (SENATOR MAITLAND)

Further discussion? Senator Fawell.

SENATOR FAWELL:

Thank you very much. Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR MAITLAND)

Indicates he will yield, Senator Fawell.

SENATOR FAWELL:

I hate to admit this, I got a letter from my Chief Judge, Judge Galasso. Has he written to you at all about this bill?

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Obama.

SENATOR OBAMA:

He has not discussed it with me at all. Again, we have had no commentary either pro or against other than the proponents of the bill.

PRESIDING OFFICER: (SENATOR MAITLAND)

Is there further discussion? Senator Obama, to close.

SENATOR OBAMA:

As I mentioned earlier, I think this is a good bill. It relieves an overburdened court process. There may be some lawyers who aren't entirely happy with it, but I -- I, as a lawyer, think actually that we need to get to the important cases and -- and be able to deal with these through administrative adjudication process. I'd ask for a favorable roll call, please.

PRESIDING OFFICER: (SENATOR MAITLAND)

The question is, shall Senate Bill 574 pass. Those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Madam Secretary. On that question, there are 55 Ayes, no Nays, 1 Member voting Present. Senate Bill 574, having received the required constitutional majority, is declared passed. Senate Bill 593. Senator -- Senator Collins, for what purpose do you arise?

SENATOR COLLINS:

Thank you, Mr. President. I -- I was off -- detained off the Floor when Senate Bill 570 was called for a vote, and had I been on the Floor I would have voted in the affirmative, and I'd like the record to show.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Collins, the record will so indicate your intent. Senate Bill 593. Senator Peterson. Senate Bill 599. Senator Donahue. Read the bill, Madam Secretary.

ACTING SECRETARY HAWKER:

Senate Bill 599.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Donahue.

SENATOR DONAHUE:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. Senate Bill 599 is a part of a package put forth by our Attorney General, Jim Ryan. And what Senate Bill 599 does, it amends the State Finance Act, Consumer Fraud and Deceptive Business Practices Acts. And it provides that if a person engaged in an unlawful practice under the Consumer Fraud Act and the victim is at least sixty-five years of age, the court may impose an additional civil

All in favor vote 'aye'; all opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On that question, 117 voting 'yes'; 0 voting 'no'; 0 voting 'present'. This Bill, having received a Constitutional Majority, is hereby declared passed. The Gentleman from Vermilion, for what purpose do you rise?"

Black: "Yes, thank you very much, Mr. Speaker. And they're leaving the Gallery, I just wanted to introduce two people from my district, Mr. and Mrs. Paul Manion and they have a German foreign exchange student with them whose name I would butcher. But the German foreign exchange student's mother and father are visiting with him and they're from Hoopeston, Illinois. We're glad to have you with us today."

Speaker Brunsvold: "Welcome to Springfield. The Gentleman from St. Clair, Representative Holbrook, for what reason do you rise?"

Holbrook: "Thank you, Mr. Chairman (sic-Speaker), I tried to vote 'yes' on that last Bill but the switch didn't work. I'd like it to be recorded that my intentions were to vote 'yes'."

Speaker Brunsvold: "You will be so recorded. The Chair would like to remind the Members that lobbyists are not allowed on the Floor. Of course, registered lobbyists, groups that come to Springfield that might not be registered lobbyists but are lobbying for a particular piece of legislation, should refrain from any activity on the House Floor. Senate Bill 569, Mr. Stephens. Out of the record. Senate Bill 574, Mr. Fritchey. Mr. Clerk, read the Bill."

Clerk Bolin: "Senate Bill 574, a Bill for an Act to amend the Illinois Municipal Code. Third Reading of this Senate

Bill."

Speaker Brunsvold: "The Gentleman from Cook, Mr. Fritchey."

Fritchey: "Thank you, Mr. Speaker, Members of the Assembly. Senate Bill 574 it would per.... is a permissive Bill which would allow Home Rule municipalities to set up an administrative proceeding by which they could try all municipal code violations other than parking and reportable vehicle offenses. This would permit both municipalities and respondents to save the time and expense of going through court proceedings. There are qualifications set forth in the Bill for the qualifications of hearing officers and, as far as the process of the hearings themselves, as well as for enforcement of any fines which would be issued subsequent to those proceedings. As many of you may be aware, there were some early differences with the realtors. We have worked out those differences. This is an amended version of the Bill, which is before us now. The realtors have removed their objection from the Bill and with that, I know of no other objections to this Bill. I'd be happy to answer any questions there may be."

Speaker Brunsvold: "And on that question, the Gentleman from Cook, Mr. Durkin."

Durkin: "Will the Sponsor yield?"

Speaker Brunsvold: "He indicates he will."

Durkin: "Representative, could you tell me what types of violations will be covered under this type of adjudication?"

Fritchey: "It could be anything from building code violations, graffiti violations, public nuisance violations. Any type of municipal code... any type of municipal code offense other than parking or vehicle."

Durkin: "You mean there's going to be no type... a speeding

violation or any type of traffic violation, would that be covered under this...?"

Fritchey: "No, Sir."

Durkin: "All right. Could you briefly explain to me what the... I mean there's individuals... are there going to be hearing officers that are going to be hired from each municipality to oversee these types of violations?"

Fritchey: "Correct." Durkin: "And could you explain to me the qualifications that are required for each one of these individuals? Who's going to be possibly appointed to that position?"

Fritchey: "Right now, the criteria that one would meet under this Bill would be that they meet one of the following criteria, either they be licensed to practice law in the state or they have previously served as a hearing officer for at least one year in this state or they have at least four years of professional experience in the subject area of code violations that they are adjudicating."

Durkin: "Now, is there any type of training which is required prior to these individuals being considered for this type of position?"

Fritchey: "Yes, the Bill does require that the hearing officers go through a training program, including backgrounds on the types of hearings... types of violations that they will be hearing and go through... going through mock hearings, as well, to familiarize them with the process."

Durkin: "Well, is there any type of continuing education requirement in this Bill for these individuals who would be... who are going to be hearing officers?"

Fritchey: "If you're talking about something like a CLE requirement, no, there's not."

Durkin: "All right. Let's... I'd like to ask a couple questions.

I mean, who's going to have the power to... it says here that the hearing officers shall have the ability to issue subpoenas directing witnesses to appear and give testimony at the hearing upon the request of the parties or the representatives. Now, are you saying that it's only in the... it's only in the hands of the hearing officer? Are they the ones who have the ability to issue subpoenas or will an individual who has been cited with a violation, do they have the ability to issue subpoenas on theirselves?"

Fritchey: "They don't... this envisions that you would be able to apply to the hearing officer, to have the hearing officer issue a subpoena."

Durkin: "Okay. Let me ask another question. Specifically, in your Bill in the Amendment on page 4, I'm not quite sure what you mean by this, but we're talking about the rules of evidence. It says, 'The rules of evidence shall not govern.' It states that, 'Evidence, including hearsay, may be admitted only if it is a type commonly relied upon by a reasonably prudent person in the conduct of their affairs.' What does that mean?"

Fritchey: "This is language that was actually put in at the request of the realtors. This is more of a informal proceeding than a court proceeding and what we had hoped to do was allow individuals to come in without lawyers if they so chose and you don't want to hold them to the standard of having to introduce and produce and present evidence in accordance with the rules. So, what this would say, that there's a more relaxed standard that the rules would not apply and hearsay type evidence could come in if it is, and again, this is language that was proffered by the realtors, if they feel that it is something that would be reasonable to rely on, on the time. It puts the discretion within...

it vested discretion in the hearing officer."

Durkin: "Well, I'm still not quite sure. I mean, it says... what type of evidence would be found reliable in these types of hearings because I'm still very confused by this statement as to what the evidentiary standards are for these types of hearings? I mean, are there certain types of hearsay which are going to be prohibited or is it going to be very loosely interpreted?"

Fritchey: "It... it admittedly vests a wide range of discretion within the hearing officer as far as the... whether to allow the evidence. I think what would most likely happen, is that the testimony would be allowed and that the hearing officer would have the ability to determine how much credibility to put in that offer of evidence."

Durkin: "Well, is it necessary to even have this language in here if we're going to say that rules, general rules of evidence won't apply but by adding this last sentence, I think it's going to raise some concern as to what exactly is relevant, what is not relevant, especially, when we say it's the type commonly relied upon by a professionally prudent person in the conduct of their affairs. I still having trouble just trying to interpret what that is supposed to mean and...."

Fritchey: "Representative, I don't disagree with you. This was compromised language. It was put into the Amendment. Again, I think that it's something that the same effect could have been achieved if the statute were just to be silent on the issue."

Durkin: "I believe you had a Bill, it was a House Bill. What was it...?"

Fritchey: "Nineteen eighteen. (sic-Senate Bill 1918)."

Durkin: "Nineteen eighteen (sic-Senate Bill 1918). Is there any difference between that Bill and this Bill?"

STATE OF ILLINOIS
90TH GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

60th Legislative Day May 14, 1997

Fritchey: "There's a lot of difference between that Bill and this Bill. Nineteen eighteen (sic-Senate Bill 1918) and 574 (sic-Senate Bill) were originally identical. What is before us now is 574 (sic-Senate Bill) amended. Gave in, and I quote the realtors, it gave the realtors 99% of what they wanted and removed their opposition to the Bill. The biggest thing in my mind that the Amendment did, was limit this... the applicability of this just to Home Rule municipalities. But then it made several other changes with respect to due process protections, enforcements of judgements, et cetera, that the realtors had requested of us."

Durkin: "All right. Could you tell me what is the... what are the appeal rights that these individuals... someone is... there's a municipal violation which is imposed upon somebody, they're found in violation of that municipal code, do they have any type of Appellate rights under this law?"

Fritchey: "They would be able to appeal the finding of the hearing officer to the Circuit Court just as any other administrative proceeding."

Durkin: "Okay. If an individual is not able to... I mean, if they are not able to afford counsel, are they allowed to have some type of representation appointed to them or... could you explain to me what... are they still on their own? If someone comes in and they are not represented by counsel, they feel that they have been unjustly treated within that administrative hearing, what are their...does this give them the right to counsel?"

Fritchey: "This will be no different than an administrative proceeding before the state right now, where if somebody wanted to appeal that if they had wanted to do it pro se,

they'd be able to do that. If they were able to obtain counsel, they could do that. As you well know, unfortunately, not everyone has access to counsel at all times. But this, in no way, modifies the current procedure as it applies to administrative proceedings."

Durkin: "All right. I mean, are there any other communities which presently... are there any communities that have this type of process already in place or...?"

Fritchey: "The City of Chicago has a Department of Adjudication and they have had hearing officers have heard building code violations, et cetera. What this allows them to do, it's more of a formal, more of a formal system and it allows those proceedings to then be appealed to the Circuit Court, and it gives them many protections that don't currently exist. But I know, just from personal experience, that the city has this and I don't know if there's any other towns in the state that do this. Under this Bill, any Home Rule municipality would be able to set up and adjudication department or an administrative division to allow them to do this."

Durkin: "Is this going to preempt Home Rule authority?"

Fritchey: "This applies only to Home Rule municipalities. It's permissive and it does not preempt."

Durkin: "But, a question of the Chair. Is this going to require 71 votes?"

Speaker Brunsvold: "We will look at the Bill and get back to you."

Durkin: "Thank you. I just have a few more questions. If you'll just give me a second."

Fritchey: "Representative, let me also say, I've got a Home Rule impact note here. This was from 1918 (sic-House Bill), originally, which said that we had a finding that the Bill

did not preempt Home Rule authority."

Durkin: "Well, I think, as you stated, that there is substantial differences between House Bill 1918 and this Senate Bill, so I'm not sure if that Home Rule note will apply to this situation. I have no further questions."

Speaker Brunsvold: "The Gentleman from Logan, Representative Turner."

Turner, J.: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Brunsvold: "He indicates he will."

Turner, J.: "Representative, you've indicated that the realtors are no longer opposed to this. What change did you make to the Bill so that the realtors would take away their opposition?"

Fritchey: "The primary changes that were made and the ones that appeared to be the greatest importance to the realtors were limiting the scope of the Bill and the applicability just to Home Rule communities and we have put some additional language in there with respect to enforcement of judgements and how those judgements became recorded. There was a concern that a lien, which may result from a fine that was imposed during a proceeding, would be against the property and would be enforceable even though the same hadn't been recorded yet. So, we have put some language that the lien would be recorded the same as any other judicial lien and that the effect would take... the impact would take effect upon recording. The other changes were made were really just some stylistic and some language changes, but the issues that appear to be the main concern were with respect to the lien, and primarily, in limiting this to Home Rule authorities."

Turner, J.: "Thank you. I was trying to listening to the debate and at the same time read my computer. Did I hear someone

say that there are not rules of evidence at these adjudicatory hearings?"

Fritchey: "The rules of evidence do not apply, formally."

Turner, J.: "Well, if there are not rules of evidence, how can you have a fair hearing which affords due process to the alleged violator?"

Fritchey: "The rules are relaxed the same as they are in any administrative proceeding now. The due process protections and, again, this is something else that was covered because we spelled it out a little more clearly. With.... The realtors had concerns with respect to making sure notice was received and that there were rights of appeal preserved and those protections are still in this Bill. They have been and they continue to be."

Turner, J.: "Well, one of the qualifications, as I understand your Bill, for the person to be a hearing officer is that they simply know the code violation. If that's the only thing they know is the code violation, and know absolutely nothing about rules of evidence, know absolutely nothing about due process, how in the world can that hearing officer afford the alleged perpetrator due process under the law?"

Fritchey: "Again, there will be a training program. There's a training program authorized to be set up under the Bill in which... the hearing officers would go through, not only additional training in the subject area, but training in the conduct of these proceedings so, as far as, how the proceeding is to be held, how evidence is to be taken, how subpoenas are supposed to be dealt with, what you do with the findings, appeal of findings, et cetera, et cetera..."

Turner, J.: "Well, I'm more concerned about what evidence is going to get in. We don't have any rules of evidence.

You've got a hearing officer that has absolutely no training other than what you've spoken about, the minimum requirements under the Bill. There's liable to be all kinds of evidence coming in that's completely irrelevant and possibly slanderous or libelous against a person for an ordinance violation and this conduct or evidence that may come into question will have nothing to do with the alleged ordinance violation. Don't you think that we need to clean the Bill up as with regard to what the qualifications for a hearing officer should be?"

Fritchey: "I think that we have adequate safeguards as far as what the qualifications of what the hearing officer should be. Those are in there. Again, there will usually be counsel on behalf of the municipality and, more often than not, with the more minor violations, the type of concerns that you raise, while theoretically possible, aren't really going to come to fruition here."

Turner, J.: "Okay, give me an example of the type of violation that you're talking about."

Fritchey: "This could be anything from a building code violation to a graffiti violation, to a public urination violation, to..."

Turner, J.: "What kind of penalties are we talking about with regard to these violations? If we're calling it minor, I mean, are we talking about a $25 penalty or $500 penalty or a $5,000 penalty? You know, at some point this is no longer minor."

Fritchey: "The vast majority, the overwhelming majority of penalties that you'd see out of these types of fines, I would imagine could be $500 or less. If you're talking about a minor offense, $50 or $100, a building code violation may result in a finding of a nominal fine and an

order to repair the unsafe condition."

Turner, J.: "So, it could be up to at least $500, but you don't envision that there would be an ordinance violation, encompassed within this statutory scheme, that would impose a penalty in excess of $500?"

Fritchey: "I'm saying, it would clearly be the exception rather than the rule."

Turner, J.: "Could it be, though, higher than that?"

Fritchey: "Could it be higher than $500?"

Turner, J.: "Yes."

Fritchey: "Sure, you could have a multiple count violation. The larger violations, the more serious violations, would more often than not, wind up in a court of law."

Turner, J.: "And as I understand, most of the municipal codes, and not that I've read them all, of course, but I think it's pretty standard language that if there is an alleged violation, each day that it continues to occur, is a new fine and so if the original fine could have been for $500, if it's not corrected for 30 days or something, you may have $500 times 30, as a penalty that might be imposed."

Fritchey: "But what happens as a practical matter is you really want to get the individual into a hearing to address the violation. The monetary portion of the violation is almost secondary to curing the unsafe condition. With the administrative process allows a municipality to get an alleged offender into the process much more quickly than a courtroom proceeding does."

Turner, J.: "Okay. You say that you satisfied the realtors by requiring that the lien be recorded with the County Recorder of Deed's office. Here's my question. Can this lien be filed or recorded prior to the appeal that may be taken by the alleged perpetrator?"

Fritchey: "The lien can be filed in accord... in a manner consistent with Article 12 of the code. So, it's like a judicial lien. If there was a appeal being filed, in the notice appeal you could also request a stay of any enforcements."

Turner, J.: "Okay, well, that's my problem with your Bill. The administrative hearing officer's finding is the equivalent of a judicial lien. Now, I don't think that's right. I don't think the hearing officer should make a determination, thereby allow the municipality to file or record the lien and, of course, foreclose on the lien if they so choose when a judge has not even heard the case. Why should a hearing officer's determination be... or have the equivalence of a lien that has been reviewed by a court of law?"

Fritchey: "Representative, what you're doing here is establishing almost a parallel court system, but if you were not going to allow them to do this, you somewhat eviscerate the Bill. If you say that you could establish and meet out a fine, but that fine has no meaning unless you go to court, all you've done then, instead of having an alternative process to take, you've got a duplicative process, and you're going through the same motions twice because you'd have to go and prove it up again in court. This streamlines the process. It allows both the municipalities and the respondents to save time and money of having to go to court initially. This language, again, and the lien issue and how the lien was going.... what the effect of that lien was, this was done again, not reluctantly, but at the request of the realtors who wanted more security in this, and say, 'Well, if you're going to have the lien, make it a judicial lien.' It will be enforceable as a judicial lien. And again, if

there was an appeal that was going to be filed, that appeal could then stay the enforcement of the filing of the lien."

Turner, J.: "Well, the realtors didn't go far enough with their request, because what you're allowing here to happen, is a lien to be placed on the property. There's a cloud on title then if that person wants to, for example, sell or exchange their property, and a court of law has not even reviewed it. Yet, there is the right to appeal to a court of law and only makes sense that the lien would be filed after that appeal right has been taken or the time to make the appeal has run. I think that is a major flaw in your piece of legislation."

Fritchey: "Once again, as a practical matter, you're not going to have a situation where a fine is set out and then the municipality runs and files the lien the next day. Steps are going to be taken to enforce the judgement to try to work out obtaining the judgement from the respondent. If those steps aren't fruitful, then you're going to get to the stage where the lien would be filed and recorded. That is going to be a much longer process than if the respondent was going to appeal from the finding, then that appeal would take place... you're shaking your head, and then that process would take place much more quickly than the filing of the lien by the municipality."

Turner, J.: "But why would you want to place a lien on someone's property until they have exhausted their appeal rights? That to me, just makes no sense, logically, whatsoever."

Fritchey: "As a practical matter, it's enforceable upon recording but what we're saying is, once you have that fine, then it is a judgement lien and it gives you the ability to go after the debtor, at that point, to attempt to collect it. Without that, you don't have any teeth for enforcement and

I think you would have to concede that."

Turner, J.: "Well, I understand it is a judgement lien. I think we just have a difference of opinion. I agree it is a judgement lien, I don't think it should be a judgement lien. I don't think an administrative hearing officer's determination that one party has prevailed, being the municipality, should be then a judgement lien so that a cloud on title is placed upon a person's property until they've either, number one, appealed it to a court of law or at least had the opportunity and let the time run, so for that reason, I can't support your piece of legislation. Thank you."

Fritchey: "Well, I appreciate that and just in response, the lien would not be a cloud on title until it was recorded and it would not be recorded really until after the appeal process had run out, but I appreciate your concern as a practical matter, I don't think that you're going to see that type of impact in the use of this procedure."

Speaker Brunsvold: "The Gentleman from Cook, Mr. Saviano."

Saviano: "I Move the Previous Question."

Speaker Brunsvold: "The Gentleman has moved the previous question. All in favor say 'aye'; opposed 'nay'. The 'ayes' have it and the previous question has been moved. Mr. Fritchey to close."

Fritchey: "Thank you. Senate Bill 574, as I said, was brought by the mayor's office of the City of Chicago. It's permissive, it would allow for all municipalities, all Home Rule municipalities, to set up an administrative adjudication process. This is a good Bill for municipalities. It's a good Bill for the respondents. We have worked on this long and hard to reach a consensus Bill. We have done that. There is no opposition to the

Bill anymore and I would request a favorable vote on this Bill. Thank you."

Speaker Brunsvold: "Mr. Cross, for what reason do you rise?"

Cross: "Thank you, Mr. Speaker. Just two questions, one, an Inquiry of the Clerk. Have there been any Amendments filed, and if so, what's the status of the two Amendments? And second, has there been a request for a verification up to this point?"

Speaker Brunsvold: "Mr. Clerk, the Amendment status on this Bill?"

Cross: "And third, and last but not least, has there been a ruling on the preemption of Home Rule? And if not, could we get an answer?"

Clerk Rossi: "Mr. Cross, the only Amendment that is on the Bill is Committee Amendment #1 and it has been adopted to the Bill."

Cross: "Thank you."

Speaker Brunsvold: "Second question, Mr. Cross. There has not been a verification request on this Bill."

Cross: "And what was the answer to the third question?" Speaker Brunsvold: "And the third answer is, this does not preempt Home Rule. The Parliamentarian says the word is 'may'. It does not say 'shall', so it takes 60 votes to pass."

Cross: "The fact, excuse me Mr. Speaker, the fact that there's the potential to preempt Home Rule, even with 'may', there's still the question... she's still ruling that it only needs 60 votes?"

Speaker Brunsvold: "The Parliamentarian indicates that this will take 60 votes. It does not preempt Home Rule because of the permissiveness of the Bill."

Cross: "And the answer about the verification was what? I've forgotten."

Speaker Brunsvold: "No one has requested a verification."

Cross: "Okay. Thank you very much."

Speaker Brunsvold: "The question is, 'Shall Senate Bill 574 pass?' All in favor vote 'aye'; all opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. And on that question, there are 76 voting 'yes'; 41 voting 'no'; 0 voting 'present'. This Bill, having received a Constitutional Majority, is hereby declared passed. Senate Bill 593, Mr. Biggins. Mr. Biggins, Senate Bill 593. Out of the record. Senate Bill 594. Mr. Moffitt. Out of the record. Senate Bill 663. Mr. Scully. Mr. Clerk, read the Bill."

Clerk Rossi: "Senate Bill 663, a Bill for an Act amending the Telephone Solicitation Act. Third Reading of this Senate Bill."

Speaker Brunsvold: "The Gentleman from Cook, Representative Scully."

Scully: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. I present to you Senate Bill 663, which amends the Telephone Solicitation Act to include services as one of the types of solicitation that is covered by this Act. Services as well as goods which was previously included. It also amends the Telephone Solicitation Act to give consumers the right to instruct a telephone solicitor that the consumer wishes to be taken off of that phone list for future solicitations by that operator. I think this is an important piece of consumer protection legislation. It gives consumers the right to tell solicitors to stop calling them. I'd ask for your favorable consideration."

Speaker Brunsvold: "And on that question, is there any discussion? The Gentleman from Vermilion, Mr. Black."