No. 128575

IN THE
SUPREME COURT OF ILLINOIS

ALEC PINKSTON,

Plaintiff-Appellee,

v.

CITY OF CHICAGO,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-20-0957
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
No. 2019 CH 12364
The Honorable Caroline K. Moreland, Judge Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

Pinkston challenged his parking ticket in the Department of Administrative Hearings ("DOAH") and was found liable. He did not file a complaint for administrative review and instead paid the fine. He now seeks a second bite of the apple, by mounting a collateral attack on DOAH's liability determination with a defense that he never even raised before DOAH. In doing so, he is attempting to transform his run-of-the-mill parking ticket dispute into a class action lawsuit, inviting the circuit court to adjudicate thousands of other tickets that should have been contested through settled administrative procedures. The circuit court correctly dismissed his complaint because he did not exhaust his administrative remedies. The appellate court majority, on the other hand, erroneously excused Pinkston from the exhaustion requirement, and its judgment should be reversed.

Pinkston, for his part, fails to assert any valid argument for why he should not be required to exhaust his administrative remedies. Instead, he stacks up all kinds of complaints about administrative adjudication by local governments, in general – not just with respect to central business district ("CBD") tickets, or even parking tickets, but in many other contexts, like red light, speeding, zoning, and building code violations. Indeed, Pinkston devotes a third of his argument to irrelevant and unfounded theories about governmental abuse, none of which has any bearing on the allegedly

erroneous CBD ticket at issue in this case, much less justifies his failure to exhaust or defeats the voluntary payment doctrine.

When Pinkston finally addresses his claim, he boldly asserts that the requirement to exhaust administrative remedies does not apply to parking tickets at all, a claim that is so patently wrong it turns the exhaustion doctrine on its head. Beyond that, he merely parrots the erroneous reasoning of the appellate court majority to argue that DOAH could not have provided him with an adequate remedy. We already explained in our opening brief why that reasoning is flawed, and Pinkston offers nothing to rehabilitate it. Nor does Pinkston provide any valid reason why his voluntary payment of the ticket does not defeat his claim. The judgment of the appellate court should be reversed.

I. DISMISSAL WAS PROPER BECAUSE PINKSTON FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES.

The exhaustion doctrine prohibits a party from seeking "judicial review without first pursuing all available administrative remedies." Canel v. Topinka, 212 Ill. 2d 311, 320 (2004). The majority excused Pinkston's failure to exhaust on the ground that DOAH "is incapable of providing an adequate remedy," Pinkston v. City of Chicago, 2022 IL App (1st) 200957, ¶ 53, and centered its rationale around allegations that the City has a "routine or systemic practice" of issuing CBD expired meter tickets to vehicles parked outside the CBD, id. ¶ 56, as well as Pinkston's request for declaratory judgment, injunctive relief, and restitution, id. ¶ 54. We explain

at length in our opening brief that none of these features of the complaint means Pinkston could not obtain an adequate remedy.

In response, Pinkston largely avoids the exhaustion doctrine altogether. He begins by leveling a litany of criticisms about the municipal adjudication process in wholly unrelated contexts. He then argues that the exhaustion requirement does not even apply to parking ticket challenges. Both attempts to avoid exhaustion fall flat. And when Pinkston finally does attempt to defend the majority's decision, he merely repeats the same flawed rationale, which should be rejected.

A. Pinkston's Sprawling Critique Of Administrative Adjudication In Wholly Unrelated Contexts Should Be Disregarded.

Pinkston opens his argument with a laundry list of grievances about everything he believes is wrong with municipal adjudication, ostensibly because it is "the broader context in which this case stands" and somehow reflects "the significant policy implications" that the court's "decision will have." Brief of Plaintiff-Appellee ("Pinkston Br.") 9. He broadly asserts that the "allure" of "revenue generated through the aggressive enforcement of municipal ordinances" of all kinds leads to "serious abuses of governmental power," id. at 10, and cites wholly unrelated bribery charges against state senators in connection with red-light cameras, id. at 10 n.12, and lawsuits against other municipalities about how they use their red-light cameras, id. at 12-13, even though there are no allegations that Chicago or its officials

engaged in similar conduct. He also cites studies purporting to show how code enforcement, in general, "reinforce[s] segregation and disproportionately harm[s] minorities." Id. at 10. But, of course, Pinkston's complaint is not a broad indictment of all municipal code enforcement practices; it alleges nothing about bribery, red-light cameras, segregation, or any of the other abuses of governmental power he describes. All this is a sideshow that should be disregarded.

In a similar vein, Pinkston offers irrelevant opinions about the way the municipal adjudication system operates. Pinkston Br. 11-12. He asserts that it operates "with virtually no independent oversight," id. at 11, leaving "little motivation" for municipalities "to refrain from issuing dubious" or "outright illegal" citations, id. at 12. But none of this extraneous commentary even remotely bears on Pinkston's narrow challenge to a $15 overcharge on his parking ticket, or whether his claims were properly dismissed for failure to exhaust.[1] He merely alleges a "routine practice" of issuing erroneous CBD

[1] Pinkston also conveniently ignores that his complaints about municipal code enforcement have already been rejected in other cases. In Van Harken v. City of Chicago, 103 F.3d 1346 (7th Cir. 1997), the Seventh Circuit rejected the notion that the City uses parking enforcement merely as "a program for raising revenues," explaining that "it is also designed to facilitate traffic flow," and that "[c]ompliance, which produces no revenue, may be as important to the City as noncompliance, which produces revenue but also clogs the streets." Id. at 1352. Courts have likewise rejected arguments that the adjudicative system is inherently biased in favor of the City. See Van Harken v. City of Chicago, 906 F. Supp. 1182, 1194-95 (N.D. Ill. 1995), aff'd as modified, 103 F.3d 1346 (7th Cir. 1997) (process is not "unfairly skewed toward a finding of liability against the ticket recipient" because "ticket

expired meter tickets outside the CBD. C. 11 ¶ 16. And while he argues that the "sheer number" of tickets alone is indicative of the City's "indifference" to ticketing errors, Pinkston Br. 25, that is pure rhetoric. As we explain in our opening brief, Pinkston offered no basis to attribute the alleged error in his ticket, or in any other CBD ticket, to anything other than mistakes by individual ticketing agents. Brief of Defendant-Appellant City of Chicago ("City Br.") 26. And, again, his own dataset points in that very direction – taking that data at face value, it reflects that a mere 2% of tickets issued to vehicles parked outside the CBD between 2013 and 2018 were erroneous in the way Pinkston alleges. Id. at 26 n.4.[2] Pinkston's attempt to label these mistakes as "governmental abuse" are spurious. His far-reaching, speculative, and conspiratorial assertions about administrative adjudication are irrelevant to the only issues before this court.

B. Pinkston Had An Adequate Administrative Remedy.

As we explain in our opening brief, Pinkston had an adequate

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recipients have a full opportunity to rebut the prima facie case"); Van Harken v. City of Chicago, 305 Ill. App. 3d 972, 974-75, 978, 984 (1st Dist. 1999) (hearing officers are independent contractors who do not benefit from making liability findings, and, in any event, their decisions are "reviewable by the circuit court under the Administrative Review Law").

[2] Pinkston notes that the City issued more than one million parking tickets in the first half of 2022 alone. Pinkston Br. 10. That would mean that the City issues, on average, approximately 12 million parking tickets over any six-year period. The 30,000 allegedly erroneous tickets issued between 2013 and 2018 would be a mere 0.25% of all parking tickets issued. In context, Pinkston's "sheer number" is not so sheer.

administrative remedy and the majority erred in concluding otherwise. City Br. 10-14, 20-27. Pinkston's claim that he was fined for parking at an expired meter within the CBD, even though the address on his ticket was outside the CBD, is precisely the type of dispute DOAH was created to handle. Id. at 10-12. The General Assembly authorized municipalities to create a system to administratively adjudicate parking violations, 625 ILCS 5/11-208.3(a), and the City accordingly created DOAH for that purpose, Municipal Code of Chicago, Ill. § 9-100-010(a). To contest a parking ticket, the recipient need only fill out an online form or drop in the mail a written statement setting forth one or more defenses, id. § 9-100-070(b), including "that the facts alleged in the violation notice are inconsistent or do not support a finding that the specified regulation was violated," id. § 9-100-060(a)(5). Had Pinkston raised his CBD defense in DOAH, he may well have prevailed, alerted the City to its error, and obviated the need for any judicial review. And had he been found liable, he could have filed a complaint for administrative review in the circuit court under the Administrative Review Law. See Municipal Code of Chicago, Ill. §§ 9-100-070(d), 9-100-090; 625 ILCS 5/11-208.3(d).

Pinkston asserts that the exhaustion doctrine "does not even apply in this case." Pinkston Br. 18. He argues that this case "is not about how DOAH adjudicates" parking tickets, but "'*the way that the City issues them*.'" Pinkston Br. 16 (quoting Pinkston, 2022 IL App (1st) 200957, ¶ 61). And he

argues that, because the alleged error here is in the ticket itself, he was not "'*aggrieved* by an *administrative decision*.'" Id. at 18 (quoting Canel, 212 Ill. 2d at 320). That is nonsense. First, there *is* an administrative decision here – DOAH's finding of liability. A42. Second, and more fundamentally, DOAH is the tribunal where ticket recipients must contest alleged errors in their tickets, see Municipal Code of Chicago, Ill. § 9-100-010(a), and Pinkston cannot avoid that rule with wordplay. Indeed, Pinkston's position, taken to the extreme, would mean that *all* claims that parking tickets were issued in error would involve "the way the City issues them," and the exhaustion rule would apply to none of them. In other words, he urges an exception that would swallow the rule for all challenges to parking tickets and would undermine City Council's express adoption of DOAH as the forum for adjudicating those tickets. There is no support for that extreme position, and it should be rejected.

Pinkston further responds that, even if "the exhaustion doctrine is implicated here," that remedy does not suffice. Pinkston Br. 19. As he argues, he is not seeking an "'individualized determination,'" but rather a determination that the City has a "routine and systemic" practice of issuing erroneous CBD tickets. Id. at 20 (quoting Pinkston, 2022 IL App (1st) 200957, ¶ 56). But, as we explain, where each *individual* has an adequate administrative remedy, that remedy cannot be avoided by amassing multiple claims of the same type. City Br. 17. And labeling the alleged errors a

"routine and systemic" practice does not eliminate the need for DOAH to adjudicate each individual ticket *before* making such a determination. A plaintiff cannot simply insert those magic words into a complaint to work an end run around administrative adjudication. If he could, that would saddle the circuit court with adjudicating tens of thousands of parking tickets that could have been handled administratively. Nothing in the case law governing the exhaustion doctrine even remotely supports that outcome.

Pinkston questions our observation that administrative adjudication serves to bring ticketing issues to the City's attention, City Br. 12, 29, arguing that it is "absurd to think that a single administrative challenge" would cause "the City to change [its] widespread practice," Pinkston Br. 25. He misses the point. If the practice is as "widespread" as Pinkston alleges, DOAH would see more than "a single administrative challenge," and would be able to alert the City to any repeated errors.[3] In any event, Pinkston could have sought administrative review and, in the same complaint, pursued an injunction based on a so-called "widespread practice" – thus, exhausting his administrative remedies *and* preserving the claim for injunctive relief without any meaningful delay.

Pinkston seems to believe he would not have been able to seek an

[3] Pinkston alleges that the City has continued to issue erroneous CBD tickets "*after* this practice came to light in the media," demonstrating "the City's indifference" to correcting the issue. Pinkston Br. 25. But, other than his own, he identifies no tickets issued after 2018.

injunction had he prevailed before DOAH or on administrative review, by asserting that a ticket recipient must "lose" before the administrative agency in order to file suit in the circuit court. Pinkston Br. 14. He even claims that "a cunning municipality" could foil judicial review altogether by "dismiss[ing] every single citation." Id. at 13 n.14. That is incorrect. The exhaustion requirement means a plaintiff must *first* seek administrative remedies *before* he can bring a claim for equitable relief, like an injunction. See Canel, 212 Ill. 2d at 320. In many, or perhaps most, cases, a successful administrative challenge will provide an adequate remedy. But if a plaintiff can establish standing, as well as the other requirements for an injunction, the successful administrative challenge would not prevent him from seeking such relief. We do not concede that Pinkston can meet these requirements, see City Br. 31 n.5, but any suggestion that a plaintiff who prevails administratively is automatically barred from seeking injunctive relief has no basis in law.

Moreover, the only relief Pinkston claims DOAH could not have provided is an injunction to "put[] an end to the City's routine and systematic" practice, Pinkston Br. 21, but Pinkston wants more than an injunction – he also seeks restitution for his payment of the enhanced fine, C. 20-21. None of his arguments about how DOAH could not afford injunctive relief supports a claim for restitution. Had Pinkston contested the fine in DOAH, he could have avoided paying it altogether; indeed, one of DOAH's core functions is to determine whether ticket recipients are liable for

"the amount of the fine" specified in the violation notice. Municipal Code of Chicago, Ill. § 9-100-070(d). Thus, there can be no serious doubt that DOAH proceedings provide an adequate remedy to ticket recipients seeking to avoid paying the extra $15 for parking at an expired meter within the CBD when, in fact, they were not parked within the CBD. At a minimum, any claim for restitution should be barred.

C. Pinkston Does Not Dispute The Majority's Ruling That None Of The Other Exceptions To The Exhaustion Doctrine Apply.

The majority correctly concluded that the exceptions for lack of agency authority, futility, lack of any question of fact or issue calling for agency expertise, and irreparable injury do not apply. City Br. 10. Pinkston does not dispute those rulings. He relies only on the exception based on an agency's inability to provide an adequate remedy. He has, therefore, abandoned his prior reliance on the other exceptions.

The closest Pinkston comes to invoking any other exception is when he hints at the futility of DOAH proceedings. He argues that DOAH is clearly "not interested in scrutinizing a factual record," as evidenced by the fact that he already challenged his ticket before DOAH and "*still* was found liable," even though his ticket made it "unequivocally clear" that he "was *not* parked" within the CBD. Pinkston Br. 26. But Pinkston never raised that defense, A42, A45, and cannot now claim it would have been futile to do so. Nor can he avoid the consequences of his waiver by contending that DOAH should

have figured it out on its own. Cf. Engle v. Foley & Lardner, LLP, 393 Ill. App. 3d 838, 854 (1st Dist. 2009) (court "is not a depository in which parties may dump their arguments without factual foundation in hopes that the court will sift through the entire record to find support for a determination favorable to their position") (quotation and alteration omitted). As the majority explained, "The fact that Mr. Pinkston unsuccessfully challenged his ticket on wholly unrelated grounds is no indication that the process would have been futile as a means of challenging the *location* of his parking violation, had he deigned to make that specific argument." Pinkston, 2022 IL App (1st) 200957, ¶ 41. Indeed, many ticket recipients with valid defenses *do* challenge their expired meter tickets in DOAH, and they prevail more than 70% of the time. CBS News Chicago, Fighting A Chicago Parking Ticket Might Be Easier Than You Think (June 7, 2019), https://www.cbsnews.com/chicago/news/parking-tickets-contest-administrative-hearing-challenge/ (last visited August 9, 2023). So, to the extent plaintiff means to suggest exhausting remedies would have been futile, the issue is both waived and utterly meritless.

D. Neither Class Action Allegations Nor Requests For Equitable Relief Excuse Exhaustion.

The majority's approach effectively creates a new exception based on nothing more than allegations that many tickets contain the same error – the sort of allegations plaintiffs use to bring a class action. It is well-settled that an aggrieved party cannot "circumvent" administrative remedies "by a class

action for declaratory judgment, injunction and other relief." People ex rel. Naughton v. Swank, 58 Ill. 2d 95, 102 (1974) (citing Chicago Welfare Rights Organization v. Weaver, 56 Ill. 2d 33, 38-39 (1973)). That is precisely what Pinkston is attempting to do here. He seeks to avoid the consequences of his failure to exhaust by reframing his run-of-the-mill parking ticket dispute as a class action for equitable relief. Naughton forecloses this approach, as do the appellate court cases we cite in our opening brief, City Br. 14-17, which, echoing Naughton, also affirmed dismissal of putative class actions seeking equitable relief based on a plaintiff's failure to exhaust.

Pinkston argues the majority's decision "was not premised on this case's status as a putative class action," but rather on the fact that Pinkston alleged a "routine and systemic" practice. Pinkston Br. 21. But it is that very allegation that Pinkston uses to assert that a class action is warranted here, C. 11 ¶ 16, and that the majority relied on to conclude that Pinkston seeks to "redress the harm" to all "ticketed individuals," Pinkston, 2022 IL App (1st) 200957, ¶ 56. To be sure, no class has been certified in this case, but the majority nevertheless allows a plaintiff to state a claim based on alleged errors in other people's tickets, and anticipates restitution to those individuals. Pinkston, therefore, offers no meaningful basis to distinguish the cases we cite.

Pinkston also argues that we cite cases involving challenges to "administrative decisions," while this case challenges how the City exercises

its "police power" in issuing tickets. Pinkston Br. 22. That is not a viable distinction. As we explain above, the decision to issue parking tickets is also subject to administrative review procedures, and exhaustion is required whenever administrative remedies are available. And courts have dismissed class actions for failure to exhaust even where the plaintiffs pled a routine course of conduct, like Pinkston does. See City Br. 14-17. For example, in Naughton, the court rejected a class action based on the exhaustion requirement when the plaintiff challenged the Illinois Department of Public Aid's practice of awarding assistance from the date of approval, rather than from the date of application. 58 Ill. 2d at 96-97, 101-02. And in Dvorkin v. Illinois Bell Telephone Co., 34 Ill. App. 3d 448 (1st Dist. 1975), the court similarly rejected a class action to enjoin the telephone company from continuing its "policy and practice" of offering lower rates to certain customers. Id. at 449-50, 456-58. Other cases we cite, many of which Pinkston ignores, likewise rejected putative class claims based on a failure to exhaust, despite allegations of a continuing practice. See Midland Hotel Corp. v. Director of Employment Security, 282 Ill. App. 3d 312, 314, 321 (1st Dist. 1996) (practice of assessing liability for unemployment security contributions in allegedly improper manner); Murphy v. Policemen's Annuity & Benefit Fund, 71 Ill. App. 3d 556, 558-59 (1st Dist. 1979) (practice of terminating pension benefits pursuant to allegedly unconstitutional statute); Foster v. Allphin, 42 Ill. App. 3d 871, 873-74 (1st Dist. 1976) (practice of

selecting lottery winners in allegedly improper manner); GTE Automatic Electric, Inc. v. Allphin, 38 Ill. App. 3d 910, 911, 914-15 (1st Dist. 1976) (practice of using allegedly improper sales factor to calculate business income); Ballew v. Edelman, 34 Ill. App. 3d 490, 492, 499 (1st Dist. 1975) (practice of using allegedly improper standard to calculate public aid).

Pinkston tries to distinguish Midland Hotel, in particular, because that case involved a collateral attack on a prior administrative decision. Pinkston Br. 23. That is no distinction, either. Pinkston's class action *is* a collateral attack on DOAH's liability determination. Pinkston challenged his parking ticket and lost, A42, and he cannot now collaterally attack that final determination by raising a defense he could have asserted in DOAH. See Malone v. Cosentino, 99 Ill. 2d 29, 33 (1983). Pinkston also ignores Midland Hotel's application of the exhaustion doctrine to the claims that were not a direct collateral attack. The plaintiffs challenged unemployment insurance calculations that had *not* been challenged in the prior administrative action, and for those, the plaintiffs were required to exhaust their administrative remedies, 282 Ill. App. 3d at 316, and were not excused from doing so based on class action allegations of "ongoing illegal practices," id. at 317. Before the plaintiffs could petition the court to enjoin the agency's allegedly unlawful conduct, they had to successfully challenge the agency's orders on administrative review. Id. at 321. So, too, must Pinkston and the putative class members successfully challenge their parking tickets in DOAH and on

administrative review before seeking equitable relief in the circuit court.

Pinkston argues that the majority properly relied on Board of Education v. Board of Trustees of Public School Teachers' Pension & Retirement Fund, 395 Ill. App. 3d 735 (1st Dist. 2009), Pinkston Br. 24, but he fails to address the court's subsequent decision in De Jesus v. Policemen's Annuity & Benefit Fund, 2019 IL App (1st) 190486, which, as we explain, City Br. 25, narrowed Board of Education. The court in De Jesus held that Board of Education applies only to the systemic miscalculation of disability or pension benefits, 2019 IL App (1st) 190486, ¶ 26, and only (1) where the action is brought by a third party, or (2) where the action is brought by a party to the pension board *and* that party "can point to a specific rule, regulation, standard, or statement of policy from the pension board itself," id. ¶ 27. Pinkston fails to explain how his case fits into these narrow circumstances. As we explain, he does not challenge disability or pension benefits, does not raise any third-party challenge, and does not identify any rule, regulation, standard, or statement of policy issued by either DOAH or the City. City Br. 26-27.

We also explain that the majority's decision effectively creates a road map for aggrieved parties to dodge administrative remedies simply by alleging that a large number of similar mistakes have been made in other cases. City Br. 29-30. An aggrieved party who fails to timely seek a hearing in DOAH or pursue administrative review can get a second bite of the apple

by challenging their ticket years later, so long as enough other vehicle owners have received tickets with the same error. In a municipality the size of Chicago – where, as even Pinkston acknowledges, millions of parking tickets are issued each year, Pinkston Br. 10 – ticketing agents are bound to make mistakes. And at that scale, a plaintiff can easily take numbers out of context to allege a "routine practice." That is what Pinkston does here. He alleges there were 30,000 tickets, but a closer look at his own data reveals that this would amount to a mere 2% of all CBD expired meter tickets issued between 2013 and 2018, City Br. 26 n.4, and an even smaller percentage of the total number of parking tickets issued for all violations during that same period. Under the majority's rationale, then, there would be little role left for administrative adjudication, and the courts would be heavily burdened with adjudicating potentially millions of ticket disputes.

Pinkston tries to downplay the significance of the majority's error by arguing that "the only circumstances where the type of routine, systemic practice at issue here would occur would be where a local government engages in either deliberate malfeasance or, at the very least, reckless indifference." Pinkston Br. 26. That argument should be rejected for two reasons. First, there is simply no basis in the law for excusing exhaustion of administrative remedies based on allegations of "deliberate indifference" or "reckless malfeasance." Second, nowhere in Pinkston's complaint does he allege either conduct. That is, no doubt, because there is no basis for such

allegations. Rather, the most he can allege is that there is a collection of individual tickets with the same error, with no basis for attributing the errors to anything other than the mistakes of individual ticketing agents. No Illinois court has ever applied an exception to the exhaustion requirement in similar circumstances, and the majority erred in doing so here.

II. THE VOLUNTARY PAYMENT DOCTRINE BARS PINKSTON'S SUIT.

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 back on the ground that the claim was illegal.'" McIntosh v. Walgreens Boots Alliance, Inc., 2019 IL 123626, ¶ 22 (quoting Illinois Glass Co. v. Chicago Telephone Co., 234 Ill. 535, 541 (1908)). DOAH issued a finding of liability on Pinkston's ticket, A42, and Pinkston paid the fine instead of pursuing administrative review in the circuit court, C. 13 ¶ 27. He had full knowledge of where he parked his car when he received the ticket and the specific Municipal Code provision he was charged with violating. A43. He also did not pay under duress, as the Municipal Code provides a safe harbor for ticket recipients who wish to exhaust their administrative remedies. See Municipal Code of Chicago, Ill. § 9-100-100(a) ("determination of liability" will not "become final" until "the respondent has exhausted or failed to exhaust judicial procedures for review"); City Br. 32-33. Pinkston's suit is therefore barred.

Pinkston denies that his payment was voluntary. He first argues that

it is "unclear whether [he] actually had knowledge of all relevant facts – such as where he parked his car and what provision of the Code he was charged with violating." Pinkston Br. 27. That is without merit. Pinkston claims that, when he paid his ticket "several months later," he may not have remembered where he parked, but the only authority he cites for the proposition that this gets him around the voluntary payment doctrine is a *Seinfeld* episode in which the main characters cannot find their car in a parking garage. Id. That is not on point. Pinkston absolutely knew where his car was parked when he received the ticket – because the ticket would have been *on his car* when he returned to it. Not remembering something is not the same as lacking knowledge of it.

Pinkston also claims that he may not have "actually understood" that the notation "CODE: 0964190B" referred to the Municipal Code provision he was cited for violating. Pinkston Br. 27. But he fails to address the controlling precedent we cite, which holds that, for purposes of the voluntary payment doctrine, individuals have an obligation "to investigate" the law. McIntosh, 2019 IL 123626, ¶ 40. Pinkston apparently never even bothered to inquire about the notation on his ticket or consult the ordinance, so he cannot now claim ignorance.[4]

[4] Pinkston finds it "particularly ironic" that he is tasked with "knowledge of precisely where he parked, and the precise boundaries of the [CBD]," but that "the City's own parking enforcement officer could [not even] correctly ascertain this information *at the time Plaintiff's ticket was issued*." Pinkston

Finally, Pinkston argues that he paid his fine under duress, Pinkston Br. 29-30, but he points to all of the same negative consequences that we already explained do not attach until a ticket recipient has exhausted or failed to exhaust administrative remedies, City Br. 32-33. Amici offer several additional reasons why they believe the negative consequences are sufficiently coercive in this case, Brief of Amici Curiae Public Interest Groups in Support of Plaintiff-Appellee ("Amici Br.") 11-16, but none suggests there was any duress here. They first contend that the safe harbor created by the Municipal Code does not apply when a ticket recipient mounts a purely legal challenge. Id. at 11-12. That is not true. A ticket recipient can still take advantage of the safe harbor by proceeding administratively. Indeed, a party may raise a purely legal question before an agency, to preserve the question for administrative review. Carpetland U.S.A., Inc. v. Illinois Department of Employment Security, 201 Ill. 2d 351, 396-97 (2002). More importantly, Pinkston's action is not purely legal. There are factual questions in each case about where the vehicle was parked, whether it was in the CBD, and whether the ticket was paid. Those facts must be decided for any of 30,000 individual tickets challenged, and the proper place for that is DOAH.

Br. 28. This is absurd. Ticketing agents deal with hundreds of vehicles daily. However diligent they are, they may occasionally make mistakes. A vehicle owner who gets a ticket has only one vehicle to concern himself with, and typically is motivated to immediately verify whether the ticket has a factual basis. Mistakes by ticketing agents do not relieve vehicle owners of the obligation to determine whether they have valid defenses.

Amici also note that the Municipal Code automatically subjects ticket recipients to "a late penalty" if the fine is not paid within 25 days of a finding of liability by DOAH. Amici Br. 12. To be sure, the Code does allow for late penalties after 25 days, Municipal Code of Chicago, Ill. § 9-100-050(e), but those, too, can be avoided if the ticket recipient files a complaint for administrative review within that timeframe, see id. § 9-100-100(a). Even so, the prospect of a late penalty is not coercive under this court's precedent. Duress exists where the refusal to pay "'would result in loss of reasonable access to a good or service considered essential,'" Parmar v. Madigan, 2018 IL 122265, ¶ 55 (quoting Wexler v. Wirtz Corp., 211 Ill. 2d 18, 24 (2004)), such as telephone service, Getto v. City of Chicago, 86 Ill. 2d 39, 51 (1981), electrical service, Ross v. City of Geneva, 71 Ill. 2d 27, 33-34 (1978), sanitary napkins, Geary v. Dominick's Finer Foods, Inc., 129 Ill. 2d 389, 398 (1989), or access to the courts, Walker v. Chasteen, 2021 IL 126086, ¶ 28.[5] There is no such loss of essential goods or services here. Furthermore, this court has already rejected the argument that the prospect of late penalties is coercive. An individual "who makes payment of a legal demand cannot be said to have made such payment involuntarily merely because he does so in the fear and

[5] Amici liken the penalty here to the filing fee in Walker, Amici Br. 14, but that comparison is inapt. In Walker, the plaintiffs' refusal to pay the filing fee would have directly blocked their access to the court, as the fee was required to file their mortgage foreclosure. 2021 IL 126086, ¶ 28. Here, access to administrative review is not conditioned on payment of the parking ticket fine, and ticket recipients have 25 days to file a complaint in the circuit court before any late penalty can be applied.

belief [that] unless such payment is made he will be subjected to the penalties of a valid act." Richardson Lubricating Co. v. Kinney, 337 Ill. 122, 127-28 (1929).

None of amici's cases support a contrary rule. They first cite Norton v. City of Chicago, 293 Ill. App. 3d 620 (1st Dist. 1997), Amici Br. 9-10, but that case is not on point. There, the plaintiffs received demand notices from a collection agency that misrepresented their rights regarding delinquent parking tickets. Norton, 293 Ill. App. 3d at 627-28. The notices threatened further legal action, default judgments, and court costs unless the plaintiffs paid their fines immediately. Id. at 623, 627-28. No such threats are present here. Amici next cite Keating v. City of Chicago, 2013 IL App (1st) 112559-U, Amici Br. 10 n.5, but that case is unpublished and thus cannot be cited as precedent, see Ill. Sup. Ct. R. 23(e)(1). It also misreads the Municipal Code, which, as we explain, creates a safe harbor whereby there is no final determination of liability – and thus no collection or other enforcement – until after the ticket recipient "has exhausted or failed to exhaust judicial procedures for review." Municipal Code of Chicago, Ill. § 9-100-100(a).

Finally, amici argue that DOAH had already entered judgment against Pinkston when he paid the fine, and under Illinois law, a judgment is compulsory. Amici Br. 14-16. This argument also ignores the Municipal Code's safe harbor. Pinkston paid his fine ten days after DOAH's determination of liability, A42, well before the period to seek judicial review

had expired, 735 ILCS 5/3-103 (35 days to file complaint for judicial review), so he had not yet exhausted or failed to exhaust his administrative remedies, meaning there was no final judgment entered against him, see Municipal Code of Chicago, Ill. § 9-100-100(a).

CONCLUSION

For the foregoing reasons, the appellate court's judgment should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,624 words.

/s/ Elizabeth Mary Tisher
ELIZABETH MARY TISHER, Attorney

CERTIFICATE OF FILING/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 was electronically filed with the office of the Clerk of the Court using the File and Serve Illinois system and served via email, to the persons named below at the email addresses listed, on August 9, 2023.

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