No. 125508

IN THE
SUPREME COURT OF ILLINOIS

POLICEMENS BENEVOLENT LABOR COMMITTEE	)	On Petition for Leave to Appeal from the Appellate Court, Fifth District, No. 5-19-0039
Plaintiff - Appellee	)	
v.	)	There heard on appeal from the Randolph County Twentieth Judicial Circuit, Randolph County, 2017 MR 52
CITY OF SPARTA	)	
Defendant - Appellant	)	The Honorable Gene Gross Judge Presiding

BRIEF OF APPELLEE

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

STATUTE INVOLVED

Quotas Prohibited 65 ILCS 5/11-1-12

"Quotas prohibited. A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.

A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. For the purposes of this Section, "points of contact" means any quantifiable contact made in the furtherance of the police officer's duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.

This Section shall not apply to a municipality subject to Section 10-1-18.1 of this Code with its own independent inspector general and law enforcement review authority.

A home rule municipality may not establish requirements for or assess the performance of police officers in a manner inconsistent with 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."

STATEMENT OF FACTS

Each month, the Sparta Police Department, "use[s] a system of monthly activity points" to "track" and evaluate the "performance" of its police officers. R. C75 – C77. This "Activity Points Policy" is "used as a standard of performance that is required." R. C75 & C77. The "[a]ctivities that produce points" include cases, citations, "NCR"s, traffic stop warnings, drug task force duties, investigations that extend beyond one shift, and "[s]hooting range training." R. C77. Specifically, "Citations" are counted and awarded "2 points each" toward the "Month[ly] Points needed." R. C77.

The Department sets different numerical point targets for its officers to meet according to whether they work the "Dayshift" or "Nightshift." R. C77. Officers assigned to the "Dayshift" must accumulate "82" points, while officers on the "Nightshift" must accumulate "65" points. R. C77. If an officer fails to meet the required numeric monthly activity points target, that "[f]ailure . . . will result in discipline." R. C75 & C78.

The numeric point targets that the officers must meet each month in order to avoid discipline are established by the Police Department according to the following procedure:

> "Each year the Chief or the Asst. Chief of Police will review the dayshift and nightshift NCR averages. They will then subtract the nightshift NCR average from the Dayshift NCR average to create the appropriate difference between dayshift and nightshift. The nightshift minimum point value of 65 will remain the same and the difference in average will be added to that to create the dayshift minimum point amount." R. C78.

If officers issue citations, the Defendant includes rather than excludes the issuance of citations or the number of citations issued by that police officer in this monthly points system. R. C77.

"[M]onthly," the Sparta Police Department counts "Citations" and then converts them to a point value of "2 points each." R. C77. While officers are not required to write any citations in order to accumulate the required number of monthly points, the point value established by the Department for issuing warnings is "1 point each," or 50% of the value given citations. R. C77. By making citations worth "2 points each," and warnings worth only "1 point each," the Activity Points policy under review incents the officers to issue citations rather than warnings in order to reach the required monthly point total more quickly. R. C77.

"From January 2013 to July 2017, City patrol officers were evaluated on a monthly and annual basis based on their monthly activity points pursuant to the Activity Points Policy." R. C76. The "Sparta Police Department Evaluation Form" used by the Police Department requires the evaluator to consider "how you compare to your other Officers" in terms of "Activity points." R. C79. With that form, the Police Department compares the officers' activity points, including rather than excluding citations, "to the avg. monthly points of other Officers working same shift and times." R. C79.

There is no evidence in the record of any steps taken by the Sparta Police Department to ensure that either the issuance of citations or the number of citations issued by one officer are not counted as activity points, and/or not compared to the number of citations issued by any other officer, after those citations are assigned "2 points each" and included in the respective officers' monthly points totals. R. C75 – C82.

There is also no evidence of record in this case demonstrating that any other police department in Illinois currently counts and includes citations issued or written by any of its officers in any points system or policy it may or may not use.

ARGUMENT

I. The legal standard of review is *de novo*, and, the fact pattern on review is unchangeable, as this case involves cross-motions for summary judgment.

Because the Appellate Court reversed the trial court's decision, the City may make any argument to "sustain the judgment of the trial court upon any ground justified by the record, regardless of the fact that such questions were not presented to and passed upon by the Appellate Court." Mueller v. Elm Park Hotel Co., 391 Ill. 391, 63 N.E.2d 365 (1945). The City may not, however, contradict the record or venture outside of it by arguing supposed facts not presented to the trial court below. Sup.Ct.Rule 341(h)(6); Lamb-Rosenfeldt v. Burke Medical Group, Ltd., 967 N.E.2d 411, 359 Ill.Dec. 681 (1st Dist. 2012).

The trial court's decision to grant or deny a motion for summary judgment is reviewed *de novo.* Harrison v. Hardin County Community Unit School District No. 1, 197 Ill.2d 466, 758 N.E.2d 848 (2001). Where there is no dispute as to an issue of material fact, the reviewing court determines whether the trial court's judgment was correct as a matter of law. Thurman v. Grinnell Mutual Reinsurance Co., 327 Ill.App.3d 920, 764 N.E.2d 130 (5th Dist. 2002). By filing cross-motions for summary judgment, the parties agreed that no genuine issue of material fact existed and that the matter should be decided based on the record presented. Tri-State Coach Lines, Inc. v. Metropolitan Pier and Exposition Authority, 315 Ill.App.3d 179, 189, 732 N.E.2d 1137, 1145 (1st Dist. 2000). In order to resurrect the trial court's decision, the City must argue that its "right to a judgment in its favor is clear and free from doubt." Morris v. Margulis, 197 Ill.2d 28, 754 N.E.2d 314 (2001). By relying upon assertions of fact that are beyond the record, and, by arguing that the statute under review is ambiguous, the City has demonstrated

that it is not entitled to summary judgment in its favor.

II. The City's legal arguments ask this Honorable Court to ignore well-settled rules of statutory construction.

The focus of this case is upon the second paragraph of the statute prohibiting ticket quotas, which states:

> "A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. For the purposes of this Section, "points of contact" means any quantifiable contact made in the furtherance of the police officer's duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer." 65 ILCS 5/11-1-12.

Objectively, that paragraph is about "evaluating a police officer's job performance," using a "points of contact" method to evaluate police officer performance, and what municipal police departments may and may not count as a point of contact when evaluating police officer performance.

Even though that paragraph is unmistakably about evaluating police officer performance, the City claims that the legislature intended that paragraph to instead be about hard, bright-line ticket quotas prohibited by the statute's first paragraph. The City even reconfigured the sentence structure of the statute to strip the final two sentences of

the second paragraph from their given context. (City's Brief, p.16, bullet points). Divorcing statutory language from its context is contrary to principles of statutory construction. Sandholm v. Kuecker, 962 N.E.2d 418, 430, 356 Ill.Dec. 733, 745 (2012). Additionally, the City's reconstruction of the text as written conflicts with "the doctrine of the last antecedent." City of Mount Carmel v. Partee, 74 Ill.2d 371, 385 N.E.2d 687 (1979). The law should be construed and applied as written by the legislature, not as reconstructed by the City.

The prime directive in matters of statutory construction is to "ascertain and give effect to the legislature's true intent and meaning." Brucker v. Mercola, 227 Ill.2d 502, 886 N.E.2d 306 (2007). That "inquiry appropriately begins with the words used by the legislature" because "[t]he language of the statute is the best indication of legislative intent." Id. Therefore, "[a]ll provisions of a statutory enactment are viewed as a whole," and, "all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation." Id. Separating entire sentences of a law from its given context is contrary to the rules of statutory construction, and, inconsistent with giving "effect to the legislature's true intent and meaning." Id.

Grammatically and contextually, the third and fourth sentences of the second paragraph are about what may and may not be counted as a point of contact when "evaluating a police officer's job performance." 65 ILCS 5/11-1-12. It could hardly be more clear that the final two sentences of the statute's second paragraph directly relate to the prior sentence in that same paragraph which states that "[n]othing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact." 65 ILCS 5/11-1-12. But, even if one wanted to believe the City's

argument, that the legislature was not speaking about "evaluating a police officer based on the police officer's points of contact," in those final sentences of paragraph two, but, instead about the hard, bright-line quotas prohibited in the law's first paragraph, that inclination runs afoul of "the doctrine of the last antecedent." City of Mount Carmel v. Partee, 74 Ill.2d 371, 385 N.E.2d 687 (1979); 65 ILCS 5/11-1-12.

Under that doctrine, "relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding and do not modify those which are more remote." In re Application for Judgment of Sale of Delinquent Property Taxes for Tax Year 1989, 167 Ill.2d 161, 170, 656 N.E.2d 1049, 1053 (1995). Contrary to this doctrine, the City argues that "the choice words in the final sentence" modify nothing in that paragraph, but are instead "merely an affirmation of the prohibitions in the first and second sentences." (City's Brief, p.17). The City's legal argument, that the final sentence of the second paragraph is not about "evaluating a police officer based on the police officer's points of contact," but is instead about the first sentence of the prior paragraph, conflicts with the doctrine of the last antecedent. 65 ILCS 5/11-1-12. The City's factual argument also rearranges, ignores or contradicts the record.

III. The City made an inaccurate assertion of fact that contradicts the record.

The City interwove an unproven, if not blatantly inaccurate, assertion of fact within its legal argument. While discombobulating the statute, the City made the following assertion of fact:

> "Under the Activity Points Policy, no officers are compared with each other related to the 'number of citations issued.'" (City brief, p.17).

As support for this assertion of fact, the City referenced a document which shows the final points totals for each of 12 months of 2016 for the eight officers involved in this matter. R. C521; A. 55. Objectively, those "Monthly Totals" for 2016 do not indicate whether citations were or were not included. R. C521; A. 55. Furthermore, the City's assertion of fact is not elsewhere supported by the record.

The record in this case establishes that if an officer issues any "Citations," it is the City's written policy to track those citations, assign them a point value of "2 points each" and include rather than exclude any and all points awarded for issuing citations in the officer's monthly point totals. R. C77; A. 43. Indeed, the City admitted that "the Department counts citations if an officer writes them." (City's brief, p.19). Therefore, it is more likely than not that the 2016 monthly point totals referenced by the City include rather than exclude points assigned to the officers for issuing citations. R. C521; A.55. This declaratory judgment action was filed to challenge whether the City's *written policy* of counting and including "Citations" issued by the officers, assigning them a value of "2 points each," and then including rather than excluding points awarded for writing "Citations" in its "monthly activity points" totals violated the statute. R. C77; A.43. Because the obvious answer to that question has always been "yes," the City has resorted to reconfiguring the statute and changing the facts, hoping this Honorable Court will reward it for doing so. This matter should be decided on the actual record of this case, not on alleged facts inconsistent with it. Harper v. Kennedy, 15 Ill.2d 46, 153 N.E.2d 801 (1958).

Beyond any and all doubt, the City's points of contact policy counts "Citations" issued by the officers and assigns them "2 points each" on a "monthly" basis. R. C77; A.

43. The 2016 "Monthly Totals" document confirms that points are tallied on a monthly basis, but it does not demonstrate that "no officers are compared with each other related to the 'number of citations issued.'" R. C521; A. 55. As observed by the Appellate Court:

> "A brief cannot be relied on if it refuses to acknowledge the full factual background. See Ill. Sup.Ct. R. 341(h)(6) (eff. Jan. 1, 1970) (statement of facts should include facts necessary to understanding of case, stated accurately and fairly without argument or comment'). As the English novelist, Aldous Huxley, observed, 'Facts do not cease to exist because they are ignored.' Huxley, *Proper Studies: Notes on Dogma,* 1927." People v. Weinke, 50 N.E.3d 688, 698, 401 Ill.Dec. 546, 556 (1st Dist. 2016).

This Honorable Court should not credit any portion of any brief (or Rule 315 petition) that is based on inaccurate or unproven assertions of fact.

IV. The City's argument about the phrase "based on" misstates the plain language of the statute while unduly emphasizing that phrase.

Because the City's points policy violates the sentence of the statute that prohibits "includ[ing] either the issuance of citations or the number of citations issued by a police officer," in points-based evaluation systems, the City accused the Appellate Court of being "improperly fixated" on that sentence. At the same time, in the same document, the City made an argument that unduly emphasizes, or fixates, upon the phrase "based on." (City's brief, p.19). The City's undue emphasis of "based on" is not only hypocritical, it distorts the statutory text. Comparing the statute as written by the legislature to the version argued by the City demonstrates that the City's "based on"

argument lacks merit and should be rejected.

A. The statute states that municipalities may evaluate police officers "based on" points of contact.

The statute provides that, "[n]othing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact." 65 ILCS 5/11-1-12. The City's argument rearranges or distorts this sentence to state or mean that "an evaluation system cannot be based on the issuance of citations." (City's Brief, p.19, emphasis in original). The statute's prohibition against including the issuance of citations in a points of contact evaluation policy is not limited only to points systems based on the issuance of citations. Because the City's argument is premised upon text not found in the statute, it should be ignored. This case is about the law passed by the Legislature, not about a fictional law that the City or the *amicus* would have preferred.

The statute expressly allows municipalities to count and tally points of contact without limitation, so long as the issuance or number of citations is excluded from that process. The statute does not "prohibit a municipality from evaluating a police officer based on the police officer's points of contact," provided that "[p]oints of contact shall not include either the issuance of citations or the number of citations issued by a police officer." 65 ILCS 5/11-1-12. The City's argument, that the legislature forbade only those evaluation systems "based on" the issuance of citations, is contrary to and distorts the legislative enactment under review.

B. The City repeatedly committed the same "errors" that it claimed were committed by the Appellate Court below.

The City argues that the Appellate Court rendered part of the statute superfluous, while its arguments are directed at persuading this Honorable Court to do that very thing.

The City also claimed the Appellate Court "improperly fixated on the last line of the statute" while the City placed undue emphasis upon the phrase "based on." (City's brief, p.18). The City's tactic of accusing someone else of doing something that is supposedly wrong, while it does that very thing, is exemplified by its preoccupation with the Appellate Court's use of the word "permissive," because the City used that same word in its argument to the trial court below. R. C499. (City's Brief, p.18).

> The City took umbrage to the following statement from the Appellate Court: "Because the City's policy includes the issuance of a citation as a permissive point of contact for evaluation purposes, it violates section 11-1-12."

With this sentence, the Appellate Court was referencing the City's written policy of including rather than excluding "Citations" and awarding them "2 points each" on a "monthly" basis as part of its "Activity Points System." R. C77; A.43. Because the City's points of contact policy permits rather than prohibits inclusion of the issuance of a citation as a point of contact, the City's particular points policy violates section 11-1-12. The Appellate Court committed no misconduct and demonstrated no misunderstanding of the word "permissive" when it used that word to indicate that the City's points policy allows or authorizes conduct prohibited by the legislature. Indeed, the City admitted that "the Department counts citations if an officer writes them." (City's brief, p.19). Counting citations and including them in, rather than excluding them from, a point-based monthly evaluation system violates the second paragraph of the statute. 65 ILCS 5/11-1-12.

The City distorted the statutory text and chastised the Appellate Court because it

lacked a sound legal argument to make. The Appellate Court is not to blame for the City's predicament, which is that it has a "monthly activity points" policy that includes "Citations" and assigns them "2 points each" in direct violation of the plain words of the statute. R. C75; A.43. This case is not about whether police departments can use points-based systems to evaluate police officers. They can. 65 ILCS 5/11-1-12. Instead, it is about whether the City of Sparta may continue to count and include "Citations," at the rate of "2 points each," within its "monthly" points policy applicable to approximately eight officers. R. C77 & C521; A.43 & A.55. The law as written plainly states that the City may not do so.

V. The Law does not contain a latent ambiguity.

In order to emphasize parts of the legislative history that are helpful to it, the City argues that the statute is ambiguous at parts "C" and "D" of its brief. Specifically, at part "C" of its brief, the City claims the statute contains a latent ambiguity "if the language cannot be read as a whole as consistent." (City's brief, p.20). Because that legal argument is based upon an inaccurate legal standard, it lacks merit and should be disregarded. Likewise, the City's claim under part "C" of its brief that the Union's attempts to use comparisons or descriptive terms prove that the statute contains a latent ambiguity also lacks merit.

A. "Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer," is not an ambiguous sentence.

In its brief, the City argued that a statute contains a latent ambiguity "if the language cannot be read as a whole as consistent." (City's brief, p.20). In support of that legal argument, the City cited to Stewart v. Industrial Commission, 115 Ill.2d 337, 504

N.E.2d 84 (1987). The Stewart opinion nowhere states that the workers' compensation law could not be read as a whole. To the contrary, this Honorable Court stated:

> "The legislature apparently neglected to consider the consequences of the remarriage provision of section 7(a) in the context of facts such as those presented by this case. *A reading of section 7(a) as a whole* indicates that the primary evil the legislature intended to remedy was the hardship to families whose principal wage earner dies leaving a financially dependent spouse, especially when the surviving spouse is left with minor children to raise as a single parent. The statute presumes the surviving spouse's dependency upon the decedent, but where there are no dependent children, the surviving spouse's right to receive benefits terminates upon remarriage. The lump-sum provision of section 7(a) is clearly intended to lessen the disincentive to remarriage that would result from a flat cutoff of benefits." Stewart v. Industrial Commission, 115 Ill.2d 337, 341, 504 N.E.2d 84, 86 (1987)(emphasis added).

A latent ambiguity was found in Stewart because the legislature failed to consider a particular situation, not because the statute could not be read as a whole.

A statute is ambiguous "when the language used is susceptible to more than one *equally reasonable* interpretation." Brucker v. Mercola, 227 Ill.2d 502, 513-14, 886 N.E.2d 306, 313 (2007)(emphasis added). Similarly, "[i]f the language employed admits of two constructions, one of which makes the enactment mischievous, if not absurd, while the other renders it reasonable and wholesome, the construction which leads to an absurd result should be avoided." Inter-State Water Co. v. City of Danville, 379 Ill. 41,

39 N.E.2d 356 (1942).

The statute states that, "[p]oints of contact shall not include either the issuance of citations or the number of citations issued by a police officer." 65 ILCS 5/11-1-12. This clear, crisp and concise language contains no hidden or undefined terms and therefore it is not ambiguous. It cannot reasonably be read to authorize or permit police departments to include, rather than exclude, "the issuance of citations or the number of citations issued by a police officer" as a point contact in a points evaluation system. 65 ILCS 5/11-1-12. Because that alternative reading is the only one proposed by the City, and because that reading is the exact opposite of the what the sentence states, it is not reasonable. Furthermore, counting citations by converting them into points is a mischievous way of circumventing the entire law. Inter-State Water Co. v. City of Danville, 379 Ill. 41, 39 N.E.2d 356 (1942). That mischief must be rejected as unreasonable.

The statute is not ambiguous because the City has not provided an "equally reasonable" alternative interpretation of the operative sentence. Brucker v. Mercola, 227 Ill.2d 502, 513-14, 886 N.E.2d 306, 313 (2007)(emphasis added). Instead of doing that, the City simply asks this Honorable Court to construe that sentence out of existence. Indeed, the City's brief merely goes through the paces, making what amounts to a talking points argument, on faith that this Honorable Court will ignore statutory language as "ambiguous." The statute should not be declared ambiguous when it is not simply as a ruse for cherry-picking the legislative history to achieve a particular result. Solich v. George and Anna Portes Cancer Prevention Center of Chicago, Ltd., 158 Ill.2d 76, 630 N.E.2d 820 (1994).

As observed by the Appellate Court:

> "Whenever a court disregards the clear language of legislation in the name of 'avoiding absurdity,' it runs the risk of implementing its own notions of optimal public policy and effectively becoming a legislature. Interpreting legislation to mean something other than what it clearly says is a measure of last resort, to avoid "great injustice" or an outcome that could be characterized, without exaggeration, as an absurdity and an utter frustration of the apparent purpose of the legislation." Dusthimer v. Board of Trustees of the University of Illinois, 368 Ill.App.3d 159, 857 N.E.2d 343 (4th Dist. 2006).

Therefore, "[t]o maintain the separation of the legislative and judicial branches and avoid compromising our fidelity to the text, we should be extremely reluctant to second-guess the clear language of legislation in the name of preventing a latent ambiguity." Id.

B. The arguments of the Union do not make the Law ambiguous.

The Union did not argue that the statute was ambiguous in the trial court below. R. C620 - C621; R. R.10; A.26; A.64 - A.65. In the Appellate Court below, "the Union argued that the policy violated the plain language of section 11-1-12." Instead of arguing that the statute was ambiguous, the Union used illustrative language to argue, for example, that the statutory text was crystal clear, or as plain as the nose on one's face. Use of illustrative language or terms to assist in understanding does not inject ambiguity into unambiguous legislative enactments. The notion is as ridiculous as claiming that the Union, by stating "crystal clear" above, has admitted that the words used by the legislature were made of cut glass.

Nonetheless, the City claims that the Law contains a latent ambiguity because the Union used phrases such as "front door" and "back door." "A latent ambiguity arises if the words of the legislation are clear in themselves but, because of external circumstances . . . the literal application of those words would create an absurdity that the legislative body could not possibly have intended." Dusthimer v. Board of Trustees of the University of Illinois, 368 Ill.App.3d 159, 857 N.E.2d 343 (4th Dist. 2006). The arguments of counsel are not external circumstances rendering statutory text ambiguous.

Under contract law, for example, one party's argument that a contract contains an ambiguity is insufficient to create an ambiguity where it does not exist. Johnstowne Centre Partnership v. Chin, 99 Ill.2d 284, 458 N.E.2d. 480 (1983). Similarly, even where the State of Illinois argues that a statute is unambiguous, courts are free to disregard the State and nonetheless find an ambiguity. People v. Ross, 168 Ill.2d 347, 659 N.E.2d 1319 (1995). As such, it is odd that the City is relying upon the Union's arguments as a basis to claim that the statute is ambiguous. If the Union's arguments really hold that much weight, then the statute is not ambiguous, because that has been the Union's position throughout this matter. R. C620 - C621; R. R.10; A.26; A.64 - A.65.

VI. Police officers are expected to be able to distinguish between making an arrest and issuing a citation, and, the City made that distinction before the Law was passed.

Under part "D" of its brief, the City relied upon the finding of ambiguity made by the trial court below to argue that the "Quota Act contains numerous ambiguities." (City's brief, p.22). Poking holes in statutory text to create doubt is contrary to accepted rules of statutory construction. For "[i]f there is doubt as to the construction to be given a legislative enactment, the doubt must be resolved in favor of an interpretation which

supports the statute's validity." In re Application for Judgment of Sale of Delinquent Property Taxes for Tax Year 1989, 167 Ill.2d 161, 168, 656 N.E.2d 1049, 1053 (1995)(citation omitted). Additionally, whenever "the language of a statutory provision is clear, the court must give it effect [citation omitted] without resorting to other aids for construction [citation omitted]." Solich v. George and Anna Portes Cancer Prevention Center of Chicago, Ltd., 158 Ill.2d 76, 630 N.E.2d 820 (1994). Also, as noted above, the City should be attempting to demonstrate that the law is clear in order to secure summary judgment in its favor. Morris v. Margulis, 197 Ill.2d 28, 754 N.E.2d 314 (2001).

The City's argument is based on the following statement by the trial court below: "[A] citation is an arrest." R. R.11; A.27. The trial court's statement was contrary to common knowledge, which is that there is a difference between being arrested and being ticketed. Tickets or citations are not arrests but are instead charging documents that indicate an arrest may have occurred. Sup. Ct. Rule 572; 625 ILCS 7/30. An arrest, on the other hand, is a "seizure," that occurs "[w]henever an officer restrains the freedom of a person to walk away." Brower v. County of Inyo, 489 U.S. 593, 109 S.Ct. 1378 (1989). The legislature is presumed to "know[] how courts have interpreted a particular statute" and that presumption should extend to the Bill of Rights. In re May 1991 Will County Grand Jury, 152 Ill.2d 381, 388, 604 N.E.2d 929, 933 (1992). The legislature is also presumed to act "rationally and with full knowledge of all previous enactments." State v. Mikusch, 138 Ill.2d 242, 248, 562 N.E.2d 168, 170 (1990). While the City faults the legislature for not defining the terms "arrest" or "citations" in the statute, the legislature had already defined "arrest" elsewhere, and it "means the taking of a person into custody." 725 ILCS 5/102-5. Also, prior to the statute, police trainees have been

instructed on the distinct curriculum areas of "arrest" and "vehicle and traffic law including uniform and non-discriminatory enforcement of the Illinois Vehicle Code." Public Act 98-756. Therefore, the City's argument that the statute is ambiguous because police officers (or more specifically police chiefs) are incapable of distinguishing between an arrest and a citation conflicts with common sense, codified laws and Supreme Court Rules.

The City's reliance upon the Driving Under the Influence statutory scheme illustrates the point. While an arrest on suspicion of Driving Under the Influence may result in one or more citations, it also may not. The seizure, or arrest, is distinct from any resulting citations, and, within the context of DUI, the arrest has significance independent from whether a charging document is ultimately issued. 625 ILCS 5/1-197.5. As the Appellate Court below found, "an arrest is a seizure or forcible restraint or taking someone into custody as a result of a criminal charge where a citation is a charging document."

The premise underlying the City's claims of ambiguity is that its police chief(s) are incapable of distinguishing between arrests and citations. That notion is belied by the record. The particular points system involved in this case predates the statute. R. C.75; A.41. According to the Assistant Police Chief's affidavit, the City awarded points under its policy for a "variety of activity, including, but not limited to: cases, arrests, citations, [and] traffic stop warnings . . ." before the statute was passed. R. C75; A.41. It strains credulity beyond its acceptable limits for the City to argue that the statute is too ambiguous to be followed, because the City's police administrators were distinguishing between arrests and citations before the statute was passed. R. C75; A.41.

The City's argument must fail because it is premised upon the notion that police chiefs, who have ascended to their supervisory position theoretically due to superior performance and experience, are worse at telling the difference between an arrest and a citation than the officers on patrol, or, the public as large. Because no ambiguity exists in the statutory text, "there is no basis to delve into the conference reports or statements of legislators to resolve the dispute in this case." Kaider v. Hamos, 975 N.E.2d 667, 363 Ill.Dec. 641 (1st Dist. 2012). Stated differently, "[w]here the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." Krohe v. City of Bloomington, 204 Ill.2d 392, 789 N.E.2d 1211 (2003). Because "the statutory language is clear and unambiguous, then there is no need to resort to other aids of construction." Brucker v. Mercola, 227 Ill.2d 502, 886 N.E.2d 306 (2007). This Honorable Court should beware of delving into the legislative history of this statute in hopes of finding clarity in the cloudy waters that await there.

VII. The Legislative History is not strictly focused upon only the first sentence of the statute.

At part E of its brief, the City claimed that the "unambiguous" legislative history is limited "strictly" to the prohibition against bright-line or hard quotas in the statute's first sentence. In reality, the debates were not wholly one-sided. Indeed, before Senate Bill 3411 passed that Chamber, the body was informed that the law "also prohibits . . . using the number of citations in a specific period of time as an evaluation of job performance." 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 48; A. 98. Similarly, before it passed the House, the body was informed that "this Bill would prohibit entities from using the number of citations in a specific period of time in an evaluation of job performance." 98th Ill. Gen. Assem., House Proceedings, May 21,

2014, at 54-55 (Appendix pp. 89-89). The City claims that the legislative history is totally clear and one-sided, even though it is plainly not, because the City's arguments depend upon this Honorable Court ignoring or obscuring the part of the law that the City is violating.

All of the legislative history is not consistent with the City's position. If this Honorable Court consults the legislative history of the law, then the entire legislative history should be considered. Morel v. Coronet Ins. Co., 117 Ill.2d 18, 509 N.E.2d 996 (1987). As this Honorable Court explained:

> "Statements made by members of the General Assembly in legislative debate assist in revealing the legislative intent behind a statute only when examined in the context of the debate in its entirety. 'Legislative intent' speaks to the will of the legislature as a collective body, rather than the will of individual legislators." Id. at 24, 509 N.E.2d 996, 999 (1987).

Instead of shedding light on a supposedly ambiguous law, the legislative history of the statute under review demonstrates that the law means what it says.

A. Part of the Senate debate of April 10, 2014 undermines the Defendant's arguments.

The City portrayed its recitation of the legislative debates as being reflective of the discussion occurring "throughout" them. (City's brief, p.26). Nevertheless, the City's brief fails to mention the comments of Senators Holmes and Raoul. Senator Holmes, in particular, urged support for the bill that he summarized as follows:

> "This bill is, quite simply, very, very straightforward. It simply doesn't allow a county or municipality or a State from requiring an officer to issue a specified number of citations or warnings in a given period of time. It

> also prohibits these entities from using the number of citations in a specific period of time as an evaluation of job performance." 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 48; A. 98.

Senator Raoul identified the evils that the bill was intended to remedy, which he described as "pressure to write a certain number of citations," and "incenting them to exercise their discretion to stop a certain number of people just to generate more money." 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 51-52; A. 101-02.

Because counting citations and assigning them a point value of "2 points each" each month, while only "1" point is awarded for warnings, incents officers to issue more citations than warnings, the legislature included the second paragraph of the law in order to prohibit back-door, indirect quotas. R. C77; A.43. Because the City cannot deny that its policy incents officers to write more tickets, it argues that the second paragraph of the law does not exist, that it has no meaning, or that it was rendered ambiguous by the Union. None of those arguments have merit.

B. The City also omitted material from the House debate of May 21, 2014 from its argument.

The House perhaps had a more robust debate about this bill than did the Senate. During the House floor debate on the 135th legislative day, the bill's House Sponsor, Representative Hoffman, indicated that the bill would allow municipalities to evaluate officers on a department-wide average number of traffic citations issued or written, so long as officers weren't compared to each other. 98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 47-48, 53-54. But, after making those statements, Representative Hoffman corrected course:

> "Well, okay. I got . . . I want to be . . . I want to make sure that . . . that it's clear. It's my understanding, this Bill would prohibit entities from using the number of citations in a specific period of time in an evaluation of job performance. So, I . . . the whole issue of using an average and looking at that, I don't know that's prohibited, but as far as the . . . entity using that number of citations in that specific time, it is my intent that you could not do that. *So, I want to make that clear. What you would have to do is, you could look at stops, warnings, arrests, investigations, community outreach, community contacts or a point what's called under the Bill points of contact. So, I don't want to really, you know, sugarcoat the issue here. I don't believe that you should be using the number of citations written in a given period of time as a job performance tool, not citations written. But I do believe you should be able to use arrests and points of contact*.'" 98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 54-55; A. 88-89. (emphasized material omitted by City).

While part of this text appears in the City's statement of "facts," the City selectively omitted the parts that undermine its position. (City's brief, p.10). The City's selective omission of the text is telling. The City omitted that material because it knows that it is violating the letter of the law as well as the intent behind it by using a "monthly activity points" performance evaluation system that counts "Citations" as "2 points each." R. C77; A.43.

VIII. The City failed to demonstrate that the Appellate Court's construction was absurd.

Based on a false premise, the City alleges under part "F" of its brief that the decision of the Appellate Court below was absurd. The false premise underlying the City's argument is that counting points of contact is mandated by the statute. While nothing in the law prohibits municipalities from evaluating police officers by counting their points of contact, the law does not require any municipality to use a points-based quota as an evaluation tool. 65 ILCS 5/11-1-12. Indeed, the City had such a quota in place prior to the law's existence. R. C75; A.41. The law also does not specify what points of contact must be counted by municipalities who choose to evaluate police officers in that way. 65 ILCS 5/11-1-12. Under the statute, and the Appellate Court's decision, municipalities are free to count the activity of officers in virtually any way so long as they do not count "the issuance of citations or the number of citations issued by a police officer." 65 ILCS 5/11-1-12.

Moreover, the City's claim of an unintended anomaly is undermined by the legislative history. According to the City, the legislature "clearly" did not intend to differentiate between warnings and citations. (City's brief, p.26). In reality, that distinction was specifically produced by the adoption of Amendment Two, on or about April 10, 2014. Prior to the adoption of that amendment, Senate Bill 3411 treated warning and citations the same:

> "A municipality may not, for purposes of evaluating a law enforcement officer's job performance, compare the number of citations or warnings issued by the law enforcement officer to the number of citations or warnings issued by any other law enforcement officer who has similar job

duties." 98th Ill. Gen. Assem., Senate Journal, April 7, 2014, 106th Legislative Day, at 49;

http://www.ilga.gov/Senate/journals/98/2014/SJ098106R.pdf**.**

Following the adoption of the amendment, warnings and citations were treated differently:

> "A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. For the purposes of this Section, "points of contact" means any quantifiable contact made in the furtherance of the police officer's duties including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer." 65 ILCS 5/11-1-12.

Because, the legislature intended to treat citations and warnings differently, there is no unintended anomaly, and the Appellate Court's decision was not absurd.

IX. This Honorable Court should disregard the *amicus* brief.

Divorced from the facts of the case, and without citation to any precedent, the *amicus* brief argues that the Union would have all points based systems "gutted," and, that police officers cannot enforce traffic laws if police chiefs are prohibited from later counting any citations they issued as part of a points-based system. That latter claim is

contrary to the record in this case, which shows that there have been police officers enforcing traffic laws in Sparta since at least 2004, and, that the City's points policy "went into effect on January 13, 2013." R. C75; A.41. The IACP's argument is therefore temporally misplaced. Additionally, the IACP's lack of familiarity with the record in this case spoils the credibility of its brief. Because the IACP cited zero times to the record, and, independently, because it provided no precedent to support its arguments, this Honorable Court should ignore the entirety of its brief. Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc., 48 N.E.3d 1060, 400 Ill.Dec. 620 (2015); In re Marriage of Saheb and Khazal, 377 Ill.App.3d 615, 880 N.E.2d 537 (1st Dist. 2007).

Indeed, the IACP appears to have chosen to believe whatever the City told it about the case, without verifying the City's account against the record. Lack of familiarity with the record explains why the IACP acknowledged that "the comparison of officers based solely on citation activity" violates the statute. (IACP brief, p.6). Because such comparisons are possible rather than impossible under the City's activity points policy, the policy violates the law, even under the IACP's interpretation of it. R. C75-78, C521; A.41-44, A.55; 65 ILCS 5/11-1-12. Furthermore, the IACP apparently misunderstood that the Appellate Court's decision was an Order which has limited value as precedent under Rule 23.

Furthermore, the function of an *amicus* is that of "a 'friend' of the court" involved "to advise or to make suggestions to the court." Burger v. Lutheran General Hospital, 198 Ill.2d 21, 62, 759 N.E.2d 533, 557 (2001). While enemies might do so, friends do not intentionally mislead one another. Therefore, as a "friend" of the Court, an *amicus* must not intentionally omit, misrepresent, and obscure matters to mislead the Court.

Other than citing the statute under review, the only legal authority discussed by the *amicus* was legislative history. More specifically, the *amicus*, like the City, cherry-picked the legislative history to include only that which was consistent with its agenda, while omitting damaging material inconsistent with that agenda. While the *amicus* may have played the role of the City's friend in this case, it was no "friend" of the Court, because it sought to mislead it. As such, its brief should be ignored. Id.

CONCLUSION

The City and the *amicus* ask this Honorable Court to nullify text within the statute by allowing municipalities to count citations and evaluate police officers based upon how many citations they issue, so long as they cover their tracks by converting the citations into "points." The legislature anticipated that mischief as one way to get around its prohibition against ticket quotas and included the second paragraph of the statute to prohibit that very conduct. This Honorable Court should not credit any of the City's strained legal arguments or inaccurate factual claims in order to nullify statutory text. Furthermore, it is an objectively false premise that police chiefs need to count tickets in order to determine whether police officers are doing their jobs. In any event, this case is not about undermining police chiefs, but is instead about whether the City of Sparta can undermine the legislature. There is no doubt that it counts citations issued "each month," converts them into points at a rate of 2 points each, and then commingles those points with all other points when comparing its officers to one another. The legislature plainly stated that doing so was prohibited, and that unmistakable legislative intent should not be undone here.

WHEREFORE, Plaintiff respectfully requests this Honorable Court affirm the decision of the Appellate Court, with whatever further instructions and/or remedies this Honorable Court deems necessary and appropriate under the circumstances.

Respectfully submitted,
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Rule 341(c) 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) 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 28 pages.

/s/ Shane Voyles

Shane Voyles

Proof of Service

I hereby certify that on the 12th day of May, 2020, I electronically filed the foregoing pleading with the Clerk of the Court and parties of record using the Odyssey electronic filing system. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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