No. 127547

In the Supreme Court of Illinois

RITA LINTZERIS, WILLIAM MORAITIS,
ZARON JOSSELL and CLARENCE DANIELS,
individually and on behalf of all others similarly situated,

Plaintiffs – Appellants,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant – Appellee.

On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-2423
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 17 CH 11375
The Honorable Anna M. Loftus and The Honorable Kathleen M. Pantle, Judges Presiding

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

At the very core of Plaintiffs' case is the long-standing public policy that the State has a paramount interest in the uniform enforcement of the RULES OF THE ROAD. Pl. Br. 21. The regulation of the use and operation of motor vehicles on the roads throughout the state is a matter of statewide concern. *Id.* at 27. Because regulating the operation of motor vehicles is a matter of statewide concern, this area of the law cannot and does not pertain to local problems that are better addressed by home rule units like Chicago. *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 110. ("[A]n ordinance pertains to local government and affairs where it addresses local, rather than state or national problems. (citation omitted) That determination requires the court to consider 'the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditional played by local and statewide authorities in dealing with it.'" (citations omitted)).

The General Assembly took the subject of regulation of the movement of vehicles out of the hands of local authorities in 1907 through passage of the State's first uniform vehicle law. Pl. Br. 3 (citing *Ayres v. City of Chicago*, 239 Ill. 237, 245 (1909) ("The legislature has by the Motor Vehicle act taken the subject of regulation of the speed and operation of automobiles out of the hands of local authorities and passed the Motor Vehicle law as a general, uniform regulation, applicable alike to all municipalities of the state.") *Ayres* and many other decisions by this Court demonstrate that uniform motor vehicle laws are a matter of statewide concern based on the legislative foundation for uniform vehicle laws. Although the City fails to address the history of motor vehicle laws through the lens of this Court's decisions, the actions of the General Assembly for more than a century

demonstrate our State's public policy that uniform enforcement of the RULES OF THE ROAD are a matter of statewide concern. Pl. Br. 2-5. Telling of Chicago's position, it fails to even mention, let alone properly distinguish, *Chicago v. Francis*, 262 Ill. 331 (1914). See Pl. Br. 19; 28; 34-35. *Francis* is part of this Court's consistent interpretation of the legislative foundation supporting the State's well rooted public policy that removes the entire subject matter of the movement of vehicles from local control except as specifically authorized by the General Assembly. *Id.* 2-5; 19-21 (collecting cases). These authorities, like *Francis,* set forth the rationale behind statewide uniform enforcement. See, e.g., Pl. Br. at 19; 28; 34-35 (citing *Francis*, 262 Ill. at 336).

After the Constitution of 1970 granted home rule units to govern problems that are purely local in nature, the General Assembly enacted Section 11-208.2 that confirms the post-home rule adoption of the firmly rooted public policy requiring consistent enforcement of uniform vehicle laws. 625 ILCS 5/11-208.2; 625 ILCS 5/11-208.1; 625 ILCS 5/11-207. Chicago acknowledges one of the three sections, Section 11-207, existed before and after the creation of Home Rule authority via constitutional amendment. Def. Br. 38; 625 ILCS 5/11-207 ("The provisions of this Chapter shall be applicable and uniform throughout the State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless *expressly authorized herein*" (emphasis added)). By enacting the other two sections, Sections 11-208.1 and 11-208.2, in response to the creation of home rule power, the General Assembly properly exercised its power to declare the State's authority exclusive or limit the power of all local units of government from passing inconsistent local ordinances. Pl. Br. 5-6.

Likewise, the text of Section 11-208.7 also contains a consistency mandate. See 625 ILCS 5/11-208.7(a) ("*Any* county or municipality may, *consistent with this Section* …" (emphasis added)).[1] The General Assembly's legislative intent is clear from text of Chapter 11 including, not only Section 11-208.2, but also the text of Section 11-208.7. As such, the Impoundment Ordinance violates the express limitation against inconsistent local laws codified in Chapter 11 and, therefore, is void *ab initi*o and unenforceable as a matter of law. This Court should so hold, reverse the judgments below, and remand this case for further proceedings.

Apparently busy selectively quoting and changing the text, and, therefore, the meaning of both Plaintiffs' Opening Brief and Chapter 11, Chicago failed to address two of Plaintiffs' critical arguments. *First*, the City fails to address the legal landscape concerning the critical regulatory role that the State has played in regulating the use and operation of vehicles since the advent of the automobile over a century ago. Plaintiffs' Opening Brief reviews the history of vehicle laws in Illinois, beginning with the first law regulating speeds throughout the state of Illinois enacted in 1903 through the enactment of Section 11-208.7 as it exists today subsequent to the 2016 amendment that includes a

[1] Indeed, in addition to its selective quoting and use of brackets to grossly misrepresent the statements in Plaintiffs' Brief, Chicago butchers the plain language of Section 11-208.7 by its use of selective, partial, quotations and brackets. Def. Br. 6 ("The statute further authorizes 'a reasonable administrative fee related to [*a* county's or municipality's] administrative and processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of the vehicle.") (emphasis added). Cf. 625 ILCS 5/11-208.7(a) ("*Any* county or municipality may, consistent with this Section, provide by ordinance procedures for the release of properly impounded vehicles and for the imposition of a reasonable administrative fee related to its administrative and processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of the vehicle.") (emphasis added). Chicago's selective quotations and substitution of words via brackets throughout its brief is, at a minimum, misleading.

limited home rule carve out. Pl. Br., 2-11. Plaintiffs' argument that the role of regulating the use or operation of vehicles is a role traditionally held by the state relies on the history of legislative action and the legislature's intent with respect to uniform and consistent application and enforcement of the RULES OF THE ROAD. *Id.* at 2; 19; 31.

Second, Chicago fails to address the indisputable fact that the State has a "paramount" interest in the uniform enforcement of the RULES OF THE ROAD. Instead, Chicago chooses to factually distinguish the decisions Plaintiffs cite for this proposition without addressing the rule of law cited in each that makes clear the State's interest in uniform regulation and enforcement of the RULES OF THE ROAD is not only "vital" but "paramount." Pl. Br. at 28 ("The State's interest in enforcement of the RULES OF THE ROAD is paramount." citing *Birchfield v. North Dakota*, ___ U.S. ___, 136 S.Ct. 2160, 2164 (2016)). Cf. Def. Br. 41 ("Plaintiffs also cite several cases that have nothing to do with home rule."). Indeed, Chicago fails to address the rule of law in *Birchfield*, *supra* (State's interest in the RULES OF THE ROAD is "paramount"); *People v. Jung*, 192 Ill. 2d 1, 3 (2000) (State has compelling interest in safe roads); and *Delaware v. Prouse*, 440 U.S. 648 (1979) (State has a "vital interest" in regulating the use and operation of motor vehicles as necessary to ensure licensed drivers are sufficiently familiar with the RULES OF THE ROAD).

In Chicago's myopic view, it has unlimited powers to regulate in any area that it can allege impacts the health and safety of a local unit of government and it can enact and enforce laws, like the Impoundment Ordinance, that offend the uniform RULES OF THE ROAD codified in Chapter 11. If such were the case, precedent upholding the uniformity and consistency mandates in Chapter 11 can just be ignored if a local unit of government alleges that the activity it seeks to regulate may impact local health and safety in home rule

units. This proposed rule of law finds no support whatsoever in Illinois law and offends a mountain of precedent. See Pl. Br. 19-21 (collecting cases from 1909 through 2016 concerning the prohibition against local laws that are inconsistent with Chapter 11 because such inconsistent local laws frustrate statewide uniform enforcement of the RULES OF THE ROAD and lead to "confusion and in some cases to injustice." *Francis*, 262 Ill. at 336).

In what appears to be an attempt to address Plaintiffs' argument that the inconsistency between the Impoundment Ordinance and Section 11-208.7 disrupts the century long uniformity mandate, Chicago argues that "the Vehicle Code does not require that vehicle laws be the same throughout the state … [r]ather, only the provisions of Chapter 11 itself must be 'uniform throughout this State…' and they must be 'uniformly applied and enforced throughout this State.'" Def. Br. 39-40. Chicago's position fails to account for the General Assembly's clear mandates that Chapter 11 be applied and enforced uniformly throughout the state and that the grant of authority to pass local laws on the subjects covered by Chapter 11 has always been premised on the express prohibition against inconsistent local laws. See 625 ILCS 5/11-208.2; Pl. Br. 19-20 (collecting cases).

Chicago fails to address over a century of precedent from this Court confirming the legislature's intent from the outset of regulation of motor vehicles. Def. Br. *passim*. *Cf.* Pl. Br. 4 (quoting *People v. Sargent*, 254 Ill. 514, 517 (1912)) ("[t]he manifest purpose of the legislature was to bring the whole subject of regulating the use of motor vehicles under the control of the State."). Instead, Chicago asserts that this Court should ignore its own precedent and that it is improper to consider the legislative and statutory foundations underlying the legislative action in this case. Chicago is incorrect in both of its assertions.

First, the legislative and statutory foundations for the RULE OF THE ROAD, in addition to this Court's precedent interpreting those foundations, aptly demonstrate that the use or operation of vehicles on State roads has been a matter more competently regulated by the State since at least 1907 when the first uniform vehicle law was passed. Pl. Br. 2-12. Second, and significantly, this foundational history is a proper form of determination of legislative intent. *Id.* at 2 (citing *Oswald v. Hamer*, 2018 IL 122203, ¶ 10).

Chicago's convenient failure to substantively address ten pages setting forth the legislative and statutory foundations underlying the laws at issue in this case, is a tacit admission that its case fails as a matter of law. Chicago cannot change the General Assembly's mandates through use of selective quotation and substitution of text, through use of brackets in quotes, that substantively changes the plain language of Chapter 11. Rather than address the legislative and statutory foundations underlying uniform enforcement of the RULES OF THE ROAD, Chicago chooses to misconstrue the 1935 legislation that, like Chapter 11 of the Vehicle Code at issue here, prohibited inconsistent local laws. Def. Br. 38. Chicago misstates the problem and claims that it, as opposed to the General Assembly, is empowered to pass whatever laws it desires concerning "the use and operation" of motor vehicles. *Id.*

Chicago's position renders Sections 11-208.1, 11-208.2, 11-207, and 11-208.7 superfluous. Indeed, Chicago fails to account for the fact that the RULES OF THE ROAD codify, among other laws, criminal DUI offenses and other matters relating to the illegal use and operation of motor vehicles on highways throughout the State. See, e.g., Def. Br. 39 ("The problem to be addressed … is the unlawful use of motor vehicles on City streets – not "the uniform regulation of motor vehicles"). Indeed, Chicago fails to address the

substantial interest the State and *all* of its citizens have in uniform enforcement of Chapter 11. *People v. Bartley*, 109 Ill. 2d 273, 285 (1985) ("There can be no question that drivers under the influence of alcohol pose a substantial threat to the welfare of the citizenry of Illinois. The problem is so serious that … we hold that this interest is compelling…") (citations omitted).

In an attempt to justify the inherent inconsistency between the draconian remedy prescribed by the Impoundment Ordinance and the remedial fee remedy prescribed by Section 11-208.7, Chicago asserts: "there was a longstanding tradition of concurrent local vehicle regulation in this state," while at the same time failing to address controlling law from this Court that local manifestation of a statewide problem alone does transform the statewide problem into a matter "pertaining to local government and affairs" within the meaning of Section 6(a). Pl. Br. 26-27.

Indeed, the lip service the City pays to this Court's precedent, set forth in Plaintiffs' opening brief, would result in a legal standard that makes home rule authority absolute and the acts of the legislature irrelevant. Clearly this was not the intent of the framers of the Constitution of 1970. Just so, the framers gave the power to the legislature to pass criminal laws such as enactment of criminal laws for criminal offenses including those at issue in this case including DUI, driving on a revoked or suspended license, and drug possession. All of these problems impact the health and safety of citizens statewide and, just like the General Assembly's uniformity and consistency mandates at issue here, the subjects addressed in Chapter 11 (entitled the "RULES OF THE ROAD") are matters of statewide concern even though all of them, of course, impact health and safety in local units of government.

Chicago offers no support for this contention whatsoever and grossly misrepresents the very scope of the Impoundment Ordinance in addition to the uniformity and consistency mandates codified in Chapter 11. See, e.g., Def. Br. 41, n. 9 (alleging that Plaintiffs' arguments that the Impoundment Ordinance and Section 11-208.7 concern the movement of vehicles, within the meaning of Chapter 11, are forfeited). Chicago's forfeiture argument in this regard is a request that the Court ignore the plain language of the statute and local law at issue that only apply, on their face, to criminal violations during the "use and operation" of motor vehicles.[2]

Chicago's arguments fail to address this Court's holdings on the issues of the scope of home rule authority under Section 6(a) of the Illinois Constitution and preemption of home rule authority by the legislature. Motor vehicles have been, and will continue to be, used or operated in Chicago during the commission of criminal offenses, resulting in the arrest of the driver and impoundment of the vehicle. Yet, that the criminal offense during the "use or operation" of a vehicle took place in Chicago does not transform a matter of statewide concern into a local problem within the meaning of Section 6(a). Indeed, every bank in *Lignoul* was located in a local unit of government; as was every court in

[2] The underlying criminal offenses identified in Section 11-208.7 are modified with the prefix "operation or use of a motor vehicle." Likewise, the Impoundment Ordinance incorporates similar, if not identical, nomenclature. The inclusion of the words "use and operation of a motor vehicle" in the Impoundment Ordinance jettisons Chicago's position that Plaintiffs fail to explain how the Impoundment Ordinance is a local law governing the movement of vehicles. See e.g., 625 ILCS 5/11-208.7(b)(1) (permitting an "administrative fee" for impoundment arising out of "operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to Section 36-1 of the Criminal Code of 2012."). Cf. Municipal Code of Chicago, § 2-14-132 ("If, after hearing, the administrative law officer [("ALO")] determines that there is probable cause to believe the vehicle was used in a violation of this Code for which seizure and impoundment applies, ***, the [ALO] shall order the continued impoundment of the vehicle …"). See also, e.g., Pl. Br. 8-9, 25-31.

Ampersand, every entertainment event in *StubHub*, and construction project in *sca*. In sum, it is Chicago, as opposed to Plaintiffs that fail to properly analyze the 6(a) factors.

Chicago argues that, under this Court's holding in *StubHub*, the Impoundment Ordinance should be upheld because the premise of the Court's holding in that case was "that the City did 'not have a traditional role' in collecting amusement tax from internet auction sites." Def. Br. 44 (citing *StubHub*, 2011 IL 111127, ¶ 35). Chicago claims that it wins the day because, "local control over vehicle regulation has been deeply rooted in Illinois for over a century." The distinction is false because it fails to credit the General Assembly's mandates the require uniform enforcement of the RULES OF THE ROAD codified in Chapter 11 and expressly preempts inconsistent local laws through the 1971 amendment to Chapter 11 adding Section 11-208.2. See Pl. Br. 31-34. In sum, Chicago's effort to persuade that the General Assembly's limited grant of power to local units – only permitting passage of local laws "not inconsistent with" Chapter 11 – provides a license to pass laws that disrupt the General Assembly's century old uniform enforcement mandates should be rejected by this Court.

Likewise, Chicago effort to draw an analogy between *City of Evanston v. Create*, *Inc.*, 85 Ill. 2d 101 (1981), and the case at bar fails. Chicago asserts that Plaintiffs' arguments concerning the impact of inconsistent local vehicle regulations on non-residents is not germane and should be rejected based on this Court's holding in *Create*. It asserts that the local landlord-tenant ordinance at issue there is substantially similar to statewide uniform enforcement of the RULES OF THE ROAD codified in Chapter 11. Chicago's contention in this regard rings hollow. Indeed, regulation of buildings by local units of government is not analogous to statewide uniform enforcement of the RULES OF THE ROAD

nor did *Create* involve a legislative limitation against inconsistent local laws like this case. See 625 ILCS 5/11-208.2. As this Court has noted, over and over again, automobiles make tours of considerable distance across the state *passing through many "cities, villages and towns.*" See Pl. Br. at 19-20 (collecting cases) and quoting *Heartt v. Downers Grove*, 278 Ill. 92, 95 (1917). Acceptance of Chicago's arguments runs contrary to the very purpose underlying the consistency and uniformity mandates codified in Chapter 11 – unform statewide regulation of the movement of vehicles. Clearly, this was not the General Assembly's intent when it codified Sections 11-208.1, 11-208.2, 11-207, and 11-208.7.

Indeed, the legislature's passage of Section 11-208.2 in 1971 operates to distinguish *Create* from the case at bar because the statute at issue did not contain an express limitation on home rule power. Chicago's reliance on this Court's decisions that have upheld an exercise of home rule power fails because all of these cases are distinguishable. There was no express statutory preemption at issue in *StubHub*, *supra*, *Create*, *supra*, *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984), *Scadron v. City of Des Plaines*, 153 Ill, 2d 164 (1992), and *Palm v. 2800 N. Lakeshore Drive Condominium Assoc.,* 2013 IL 110505. This alone dispenses with Chicago's arguments. See, e.g., *Int'l Ass'n of Firefighters, Local 50 v. City of Peoria*, 2022 IL 127040, ¶ 37. In sum, Chicago's arguments, concerning lack of authority under Section 6(a), all fail based on the General Assembly's express limitation against inconsistent local laws. P.A. 77-706 (1971) codifying 625 ILCS 5/11-208.2.

Just so, "[u]nder Chapter 11 of the [Vehicle] Code … home-rule designation does not enhance a municipality's ability to enact ordinances on the same subjects, since the same limitations of power apply to both home-rule and non-home-rule entities." *People ex*

rel. Ryan v. Village of Hanover Park, 311 Ill. App. 3d 515, 525 (1st Dist. 1999), *appeal denied*, 189 Ill.2d 582 (2000). Chicago urges that this Court should hold that there is no specific language in Chapter 11 preempting home rule power to assess penalties for impoundment offenses and the lack of a specific text in Section 11-208.7, re-codifying the express statutory limitation in Section 11-208.2, results in the conclusion that Chicago can ignore Section 11-208.7 and assess administrative penalties is incorrect for myriad reasons.

For example, the intent of the legislature in passing Section 11-208.2 was to create a system of uniform enforcement of the RULES OF THE ROAD applicable to home rule units and non-home rule units alike. See *Hanover Park*, supra at 525 (Section 208.2 created equal power for local units of government – home rule or not - with respect to passage of local laws that are codified in Chapter 11 save expressly excepted sections that are not relevant here). Chicago asserts that Section 11-208.2 does not apply, and that Plaintiffs' arguments fail because Section 11-208.7 must repeat the express limitation codified in Section 208.2. Def. Br. 23-26. Chicago is incorrect. Chicago's interpretation fails to give meaning to the plain language of Section 11-208.2 and renders the wording of Section 11-208.2, identifying the specific sections of Chapter 11 that are excepted, nugatory. As a preliminary matter, the plain language of Section 11-208.2 states that all of the provisions of Chapter 11 are limitations on home rule authority, save the five specifically excepted sections of Chapter 11 that are not germane here. 625 ILCS 5/11-208.2 ("The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations consistent herewith except pursuant to Sections 11-208, 11-209, 11-1005, 11-1412.1, 11-1412.2 of this Chapter of this Act.").

This Court presumes the General Assembly actions were rational, with full knowledge of all previous enactments, when it enacts a law. *State v. Mikusch*, 138 Ill.2d 242, 248 (1990). Chicago fails to rebut this presumption in any way. As such, this Court should reject Chicago's plea that Section 11-208.2 has no application to Section 11-208.7 because there is no express language limiting home rule power in Section 11-208.7. The Court presumes that the General Assembly acted with full knowledge of previous enactments when it codified Section 11-208.7 and did not include Section 11- 208.7 in the list of sections in Chapter 11 excepted from Section 11- 208.2. As such Chicago's interpretation fails as a matter of law.

There is also a presumption that the General Assembly will not enact a law that contradicts an existing law absent express repeal. *Id.* Because there was no express repeal of Section 11-208.2 the presumption concerning contradictions between laws defeats Chicago's arguments. Chicago's interpretation render's the General Assembly's prior enactment, and amendments to Section 11-208.2 meaningless. This Court gives meaning to every provision in a statute. See, e.g., *In re Estate of Wilson*, 238 Ill.2d 519, 561 (2010). Indeed, it would be nonsensical, if not bizarre, to require the legislature to restate separately a provision, such as 11-208.2, that limits home rule authority or declares the State's authority exclusive with respect to an entire Chapter or Act. See, e.g., *City of Chicago v. Roman*, 184 Ill.2d 504, 518 (1998); *Int'l Ass'n of Fire Fighters,* 2022 IL 127040 ¶ 24.

Indeed, the only distinction Chicago attempts to draw is that Section 11-208.2 is an express limitation on home rule units as opposed to a declaration of exclusive exercise of power by the state. This is a distinction without a difference and, in any event, is defeated by the language in the Constitution of 1970 that empowers the General Assembly to enact

express limitations in addition to declarations of exclusive power by the State as well as this Court's holding with respect to the express limitation codified in Public Safety Benefits Act that was upheld earlier this year. *Int'l Ass'n of Firefighters*, 2022 IL 127040, ¶ 24.

Chicago asserts that this Court held a "statutory provision that partially preempts home rule authority presupposes that local governments have authority in the area." Def. Br. 30 (citing *Ill. Rd. & Transp. Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶ 48). Chicago's reliance on *Ill. Rd. & Transp.* is misplaced inasmuch as Chicago cites this Court's discussion concerning the landscape of home rule under the Constitution of 1970 permitting home rule units to exercise a power concurrently with the state except where the state has limited the concurrent exercise of that power or the state has not declared its power to be exclusive. *Id.*

It is Section 6(i) of the Illinois Constitution that "presupposes that both the legislature and home-rule unit have concurrent authority as to the power at issue" not the statute limiting home rule authority as Chicago suggests. *Id.* (citing Ill. Const. 1970, art. VII, § 6(i)). Therefore, a statute preempting home rule authority does not create a presumption that the power being regulated pertains to the home rule unit's government and affairs. Instead, Illinois presumes that a home rule unit can regulate concurrently unless the state has limited this power, as applicable here through Section 11-208.2.

What's more is the fact that, before the effective date of the Constitution of 1970, local units of government could only regulate the use and operation of motor vehicles to the extent permitted by the General Assembly. See Pl. Br. 3-5 (collecting cases). Subsequent to the effective date of the Constitution of 1970 home rule units were expressly limited from passing local laws inconsistent with Chapter 11 by enactment of Section 11-

208.2. *Ruyle v. Reynolds*, 43 Ill.App.3d 905, 907-08 (4th Dist. 1976) ("Under the new constitution, however, home rule units are allowed to make any and all regulations not specifically prohibited by the General Assembly. Such a limitation has been enacted in the form of section 11-208.2 of the Vehicle Code."). In sum, all municipalities were prohibited from passing inconsistent local laws, before and after the 1970 home rule amendments, in the same manner. As such, because non-home rule units cannot impose penalties for impoundment offenses, absent statutory authority, the imposition of penalties by a home rule unit violates both uniformity clauses and is in conflict with Chapter 11 via Section 11-208.7 which prescribes a remedial remedy in the form of an "administrative fee."

Moreover, Chicago's contention, that the General Assembly's prohibition against inconsistent local traffic laws, beginning in 1907 with the enactment of the State's first uniform vehicle law, is irrelevant when analyzing Sections 11-208.2 and 11-208.7, fails because Section 11-208.2 operates to limit home rule power such that home rule units have no greater power than non-home rule units with respect to passing and enforcing local laws that are inconsistent with Chapter 11. *Village of Hanover Park*, 311 Ill. App. 3d at 525. Indeed, Chicago's arguments render the uniform enforcement and prohibitions against inconsistent local laws codified in Chapter 11 meaningless. This violates long standing rules of statutory construction that a statute should be construed in a manner that does not render part of it meaningless. *Estate of Wilson*, 238 Ill. 2d at 561.

In this regard, Chicago fails to account for the plain language of Section 11-208.7, that confirms the intent of the General Assembly to proscribe the imposition of administrative penalties. See, e.g., 625 ILCS 5/11-208.7(c)(2) ("… (2) The fees shall be in addition to any other penalties that may be assessed by a court of law for the underlying

violations…"); 625 ILCS 5/11-208.7(i) ("Unless stayed by a court of competent jurisdiction, any fine, penalty, or administrative fee imposed Under this Section …"). The Court considers the Section *in para materia* and considers each word or phrase in relation to other parts of the statute. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 60 (2006). The General Assembly never qualifies the word "penalty" with the word "administrative" as it does when referencing "administrative fees" and Chicago's interpretation – that the General Assembly intended to permit it to impose a completely inconsistent "administrative penalty" renders Section 11-208.7(c)(2) superfluous. Chicago's failure to address the plain language of the statute is telling.

The legislature's choice of words in Section 11-208.7 demonstrates legislative intent to only permit local units of government to collect "administrative fees" that are the antithesis of penalties. Common law does not provide for recoupment of the expenses Section 11-208.7 permits local government units to recover. Pl. Br., 38-39, n.5. Moreover, Chicago has no statutory authority to administratively adjudicate impoundments unless Section 11-208.7 applies to it. *Blaha v. City of Chi*., 2022 IL App (1st) 210546.

Chicago's effort to dispense of a century of precedent concerning the legal distinction between a fine and a fee fails. In this vein, Chicago completely mischaracterizes Plaintiffs' arguments that fines and fees are "legally inconsistent." *People v. Jones*, 223 Ill. 2d 569, 598 (2006); Pl. Br. 39-42. As such, Chicago's Impoundment Ordinance allowing for fines to be imposed cannot be reconciled with Section 11-208.7, which allows municipalities to impose fees and also mandates that municipalities enact ordinances that are consistent with Section 11-208.7. *Id.* In *Jones*, after a lengthy discussion of the difference of fines and fees, this Court determined that judicial estoppel did not apply

because one element of judicial estoppel is that the two positions taken by a party must be factually inconsistent, and the argument of whether a charge is a fine or a charge is a fee are legally inconsistent. *Jones*, 223 Ill. 2d 569 (2006). *Jones* in no way implies that its holding is so drastically limited to its exact facts as Chicago suggests. *Id.* Chicago fails to overcome this Court's holding in *Jones* that "fines" and "fees" are "legally inconsistent" making the penal Impoundment Ordinance void *ab initio*.

The prevailing principle is that the common law remains the law of Illinois unless it is expressly revoked by statute. Non-home-rule units had no common law right to recoupment of "administrative and processing costs" prior to enactment of Section 11-208.7. Because Section 11-208.7 prescribes a remedial remedy limited to a local unit's "administrative and processing costs" relating to the arrest and detention of the offender and impoundment of the vehicle, it is properly labeled an "administrative fee." Home rule units cannot lawfully impose remedies that extend beyond the remedy prescribed in Section 208.7. Doing so, would result in inconsistent application of Chapter 11 because it is indisputable that non-home rule entities cannot impose "administrative penalties" or any penalty for that matter, relating to the impoundment of a vehicle used during the commission of a criminal offense. It is undisputed that the Impoundment Ordinance, as amended in 2011, is punitive – the relief it seeks is a true "administrative penalty." See Pl. Br. 7 (citing *People v. Jaudon*, 307 Ill.App.3d 427, 442-43 (1st Dist. 1999) (citing *People v. Ratliff*, 282 Ill. App. 3d 707 (2d Dist. 1996)). Chicago fails to address either case.

Chicago also fails to address the fact that, in Illinois, forfeiture proceedings are considered remedial *in rem* proceedings that impose a civil sanction. Pl. Br. 46 citing *In Re: P.S.*, 175 Ill. 2d 79, 86 (1997). Chicago admits that the "administrative penalty" is

imposed based on the violation of an underlying criminal offense. Def. Br. 48. (citations omitted). Yet, it fails to dispute that Section 11-208.7 is remedial and in derogation of common law. Thus, through its failure to respond to these points, Chicago has tacitly admitted its arguments, that the General Assembly would ignore prevailing case law when codifying a law such Section 11-208.7, fail.

Plaintiffs argue that "[t]he parameters of double jeopardy under the Illinois and United States Constitutions, and this Court's jurisprudence, further demonstrate the [General Assembly's] intent to proscribe penalties." Pl. Br. 46. Chicago argues that Plaintiffs forfeited this argument by not raising it below. Chicago is incorrect on both fronts. First, the argument was raised below. C. 291-93; Pl. App. Br., 14-15, 33. Indeed, the circuit court cited both *Jaudon*, *supra* and *Ratliff*, *supra* in its decision. C. 385; A. 034. Chicago's position fails to account for the impact of both of these decisions on the General Assembly when it codified Section 11-208.7.

"Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *People v. Espinoza*, 2015 IL 118218, ¶ 34 (citations omitted). Indeed, Chicago fails to explain why, in the face of *Ratliff*, *Jaudon*, and *In re: P.S.*, *supra*, the General Assembly would enact a law permitting the imposition of "administrative penalties" for impoundment offenses. Clearly the General Assembly intended a remedial remedy thus proscribing a punitive remedy. Moreover, this Court's jurisprudence cannot be reconciled with Chicago's arguments concerning the impact of case law on the General Assembly for purposes of statutory construction and determining legislative intent. See *People v. Edge*, 406 Ill. 490, 497 (1950).

Likewise, Chicago fails to address Plaintiffs' other statutory construction arguments. Rather than address the text of Section 11-208.7, the City points to transcripts of floor debates, advancing a new rule of statutory construction – the legislature was confused, and, therefore, this Court should just ignore the text of the statute and other rules of statutory construction. Def. Br. 27. Chicago's argument, that the General Assembly was confused is of no moment. This Court presumes the legislature intended its enactments to be consistent and harmonious. Pl. Br. 15 (citing *United Citizens v. Coalition to Let the People Decide*, 125 Ill. 2d 332, 338-39 (1988)), this case can be determined by the text of Chapter 11, the Court should not resort to legislative history which Chicago admits is of little value. *Oswald v. Hamer*, 2018 IL 122203, ¶ 10.

Chicago fails to address several of Plaintiff's arguments with respect to the text of Section 11-208.7 instead resorting to its new rule that our General Assembly was confused and disingenuous home rule arguments[3] that Section 11-208.2 does not apply because it is not re-incorporated in every separate provision of Chapter 11 – an argument that renders Section 11-208.2, and the language therein excepting five specific sections of Chapter 11 excepted therefrom, superfluous.

Furthermore, Chicago's new rule of statutory construction – that our General Assembly was confused – fails to address Plaintiffs' arguments that considered the other activities the same session of the General Assembly addressed at the same time it enacted

[3] The City's sole response to Plaintiffs' arguments concerning why the Statute on Statutes and Home Rule Note Act do not apply here fails. Def. Br. 24-25. The General Assembly's action that is pertinent is when it limited home rule power to prohibit local laws inconsistent with the RULES OF THE ROAD codified in Chapter 11 of the Vehicle Code through Section 11-208.2 which was enacted in 1971, which was before the enactment and effective dates of the Statute on Statues (1977) and the Home Rule Note Act (1991). Pl. Br. 32 n. 4.

Section 11-208.7 including a comprehensive rewrite of the entire Criminal Code of 1961, the State's civil, *in rem*, vehicle forfeiture law, in response to the *Alvarez v. Smith*, 558 U.S. 87 (2009). Pl. Br. 9-11.

The arguments concerning Section 6(a) of the Constitution were not forfeited as Chicago suggests. First, Plaintiffs have argued the entire way that Chicago failed to meet its burden, as the movant on a Motion to Dismiss under 735 ILCS 5/2-615, that its Impoundment Ordinance is authorized under Article VII § 6(a) and that Chicago failed in its opening brief to set forth the rationale for why § 6(a) grants home rule authority to impose draconian administrative penalties. C. 299. Moreover, Plaintiffs properly argued the entire way that uniform enforcement of the RULES OF THE ROAD is a vital state interest. Indeed, Chicago failed to address the cited cases, aside from stating the cases did not concern home rule authority and addressed other issues concerning the State's interest in policing its highways and uniform enforcement of the RULES OF THE ROAD. Chicago also failed to address the quoted statement of law in these authorities both here and below. See, *supra*. Thus, it is Chicago that fails to argue, let alone provide authority, for its proposition that the State's interest in its roads is compelling and that its interest in uniform enforcement of the RULES OF THE ROAD is not just vital – it is paramount. Moreover, waiver and forfeiture are limitations on the parties not this Court. *Jackson v. Bd. of Election Comm'rs*, 2012 IL 111928, ¶ 33. "When an issue is not specifically mentioned in a party's petition for leave to appeal, but it is 'inextricably intertwined' with other matters properly before the court, review is appropriate." *Id.* (citations omitted). This Court should address this case of great public importance on the merits.

As this Court held in *People v. Thompson*, a constitutional challenge to a statute that a statute is void *ab initio* is exempt from forfeiture. *People v. Thompson*, 2015 IL 118151, ¶ 32. Although this rule of law did not ultimately apply in *Thompson* because it involves an "as applied" challenge, this Court later applied this rule of law in *People v. Ligon*, 2016 IL 118023, holding that a challenge based on a facially unconstitutional statute could be brought at any time. *Ligon*, 2016 IL 118023, ¶ 9 (citing *People v. Thompson*, 2015 IL 118151, ¶¶31-32 ("a type of voidness challenge to a final judgment under section 2-1401 involves a challenge based on a facially unconstitutional statute")).

"When a statute is declared facially unconstitutional and void *ab initio*, it means that the statute was constitutionally infirm from the moment of its enactment and, therefore, unenforceable." *Thompson*, 2015 IL 118151, ¶ 32 (citing *People v. Davis*, 2014 IL 115595, ¶ 25). Here, Plaintiffs have argued throughout this litigation Impoundment Ordinance is void *ab initio*, and therefore, under this Court's precedent, this constitutional challenge is exempt from forfeiture. Finally, the United States Supreme Court has also recognized that arguments raised that are not separate claims but "are, rather, separate arguments in support of a single claim" are not deemed to be waived. *Yee v. City of Escondido*, 503 U.S. 519, 534-35 (1992).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that this Court reverse the judgment of the circuit court and remand this case for further proceeding and trial.

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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 or words 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 20 pages.

/s/ Charles F. Morrissey
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CERTIFICATE OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements in this instrument are true and correct, and that on October 20, 2022, a copy of the foregoing Reply Brief was filed electronically with the Clerk of the Illinois Supreme Court and was served electronically via Odyssey File and Serve at the email addresses below.

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