IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TERIE L. KATA, MAUREEN SULLIVAN, NICHOLAS CLARKE, BOHDAN GERNAGA, and NIRAJ RAMI, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
	)	No. 2012 CH 14186
v.	)	
CITY OF CHICAGO, an Illinois Municipal Corporation,	)	
Defendant.	)	

MEMORANDUM OPINION AND JUDGMENT

The City of Chicago's red light camera program was first implemented in 2003 and today levies more than $60 million annually in fines against local motorists. The cameras capture the license plate numbers of automobiles that move through an intersection when facing a red light. The vehicles' owners are then automatically ticketed by mail.

The cameras have been controversial since their installation, and in recent years they have been tied to a high profile bribery scandal, criminal indictments, and convictions. *See, e.g., U.S. v. Bills*, No. 14 cr 00135 (N.D. Ill. Jan. 26, 2016). In separate proceedings, the City itself claims that the cameras' original vendor, Redflex Traffic Systems, Inc., fraudulently obtained the contracts to implement the program. *City of Chicago v. Redflex Traffic Systems, Inc.*, No. 14 L 4211 (removed to Federal Court, No. 15 cv 08271 (N.D. Ill.)). Additionally, aggrieved motorists have filed several civil lawsuits challenging the program's legality under a variety of theories. *See, e.g., Idris v. City of Chicago,* 552 F.3d 564 (7th Cir. 2009); *Keating v. City of Chicago*, 2013 IL App (1st) 112559-U, *appeal dismissed* 2014 IL 116054; *Falkner v. City of Chicago*, No. 14 cv

5459, 2015 U.S. Dist. LEXIS 164636, at *3-4 (N.D. Ill. Dec. 9, 2015). Just weeks ago, another judge in the Chancery Division denied a motion to dismiss a complaint that challenges the City's compliance with the program's notice provisions. *Simpson v. City of Chicago*, No. 15 CH 04802 (J. Kennedy, Feb. 19, 2016 Order).

In this case, Plaintiffs do not challenge the City's implementation of the program or compliance with its legislative requirements. Rather, they challenge the constitutionality and/or legality of the program's entire legislative foundation.

The program was created and operates pursuant to chapter 9-102 of the City's municipal code. Plaintiffs allege that the City lacked authority to adopt chapter 9-102 in 2003, when it was initially enacted. Plaintiffs further allege that the enabling legislation passed by the Illinois General Assembly in 2006, Public Act 94-795, violates the Illinois Constitution's proscription against local laws. *See* Ill. Const. 1970, art. IV, § 13.

Public Act 94-795 expressly authorizes the use of red light cameras only by the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, Will, and by municipalities located within those counties. P.A. 94-795, *codified in* 625 ILCS 5/11-208.6(m). Plaintiffs contend that Public Act 94-795 contains no classificatory basis for the differential treatment of the eight designated counties and, thus, amounts to a facially unconstitutional local law. They further allege that without valid enabling legislation, the City had no authority to adopt or enforce chapter 9-102 and the ordinance was void *ab initio*.

Alternatively, Plaintiffs allege that if Public Act 94-795 withstands constitutional challenge, it still does not revive a city ordinance that was void *ab initio*. According to Plaintiffs, the program itself remains void because chapter 9-102 has never been fully reenacted by the City Council since the enactment of Public Act 94-795.

Additionally, Plaintiffs claim that the City's yellow lights are deliberately timed to fall below a 3.0 second minimum duration. Plaintiffs contend that this minimum is mandated by federal safety standards.

Ultimately, Plaintiffs seek to enjoin the future operation of the red light camera program. They also seek class certification to recover all fines paid to the City for violations captured by red light cameras since the program's implementation in 2003.

Plaintiffs' counsel presented a nearly identical challenge to the City's red light camera program in a previous case that was filed in the Chancery Division, *Keating v. City of Chicago*, 10 CH 28652. Prior to the certification of any class, the Circuit Court dismissed *Keating* with prejudice, and the Appellate Court affirmed. 2013 IL App (1st) 112559-U. The Appellate Court decision, however, was filed under Illinois Supreme Court Rule 23 and, thus, it is not binding precedent. The Illinois Supreme Court granted the *Keating* plaintiffs' petition for leave to appeal. Two justices recused themselves, and the remaining five justices' opinions split in a 3-2 vote. 2014 IL 116054. As such, the Supreme Court could not reach the constitutionally-required concurrence of four justices, and the appeal was dismissed. *Id.* The Supreme Court's dismissal effectively affirmed the Appellate Court's decision, but it is likewise of no precedential value. *Id.*

This Court stayed the proceedings in this case during the pendency of the *Keating* appeal. Following the disposition of *Keating*, the City filed a 2-619.1 motion to dismiss. The 2-619 portion of the City's motion primarily argued that the disposition of *Keating* precluded this action by operation of *res judicata*. This Court previously addressed the 2-619 portions of the City's Motion in an oral ruling dated July 30, 2015 and held that *res judicata* did not apply to most of the named plaintiffs because they were not parties to *Keating*. The Court did, however,

dismiss two plaintiffs. The first dismissed plaintiff, Bodhan Gernaga, could not proceed because he had already appealed his ticket under the Administrative Review Law and received a final judgment on the merits of that appeal. Accordingly, his claim was barred by *res judicata*. Another plaintiff, Nicholas Clarke, was dismissed because the applicable statute of limitations had lapsed on his claim.[1] Consequently, there are no remaining plaintiffs with claims that predate the enactment of the 2006 enabling legislation.

This Memorandum Opinion and Judgment addresses the 2-615 portion of the City's motion, which attacks the substance of the remaining challenges to the City's authority to enact the program. The City first argues under section 2-615 that it permissibly acted within the scope of its authority as a home rule unit when it adopted chapter 9-102 in 2003. The City, thus, argues that Public Act 94-795 was unnecessary to authorize the implementation of the red light camera program. Alternatively, the City argues that chapter 9-102 was not void *ab initio*, but was merely preempted by certain provisions in the Illinois Vehicle and Municipal Codes because the City has inherent home rule authority to regulate traffic within its borders. The City then argues that Public Act 94-795 was sufficient to lift any preemption and give effect to the ordinance.

Next, the City argues that Public Act 94-795 is not a facially unconstitutional local law. In support, the City argues that under *Cutinello v. Whitley*, 161 Ill. 2d 409, 420 (1994), a statutory listing of affected counties can be a permissible means of classification and is subject to rational basis review. Applying the rational basis analysis, the City argues that the classification in Public Act 94-795 is reasonable because the affected counties are among the state's most populous and are also the closest in proximity to the major metropolitan areas of Chicago and St.

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1. A full transcript of the Court's July 30, 2015 oral ruling has been filed with the Clerk and was made part of the record. In that ruling, the Court also addressed the City's affirmative defense under the voluntary payment doctrine. The Court held that the applicability of the voluntary payment doctrine raised issues of fact that could not be resolved on a motion to dismiss.

Louis. Accordingly, the City argues that the legislature could have rationally determined that additional red light enforcement mechanisms were only warranted in the affected areas, where there are presumably more vehicles and pedestrians, and the safety threat posed by red light violations is correspondingly higher.

Turning to Plaintiffs' yellow light claim, the City argues that Plaintiffs have not alleged a legally enforceable 3.0-second minimum. The City argues that nothing in the federal regulations cited by the Complaint impose mandatory minimum durations for yellow lights in the City, and that even if they did, Plaintiffs lack standing to enforce the regulations because the regulations do not create a private right of action.

This matter has been extensively briefed, and the Court has considered all of the arguments presented by the parties. In the end, resolution of the issues is guided by two fundamental principles. First, legislative enactments are presumed to be constitutional, and the Court is obligated to uphold their validity whenever it is reasonably possible to do so. *Wilson v. Department of Revenue*, 169 Ill. 2d 306, 310 (1996). Second, trial courts are bound by decisions of the Supreme Court. *Robinson v. Johnson*, 346 Ill. App. 3d 895, 907 (1st Dist. 2004). Under the constitutional analysis prescribed by the Supreme Court in *Cutinello*, Public Act 94-795 passes constitutional muster. The Court further holds that Public Act 94-795 operated to lift any preemptive force of prior laws and gave effect to chapter 9-102. Finally, Plaintiffs have no legal basis to challenge the timing of the City's yellow lights.

Accordingly, for reasons that are set forth in detail below, the City's 2-615 Motion is granted, and the Complaint is dismissed in its entirety, with prejudice. Count I, which challenges the red light camera program, is addressed first. Count II, which challenges the yellow light timings, is addressed following the Court's discussion of Count I. Count III seeks restitution for

all fines alleged to be unlawful under counts I and II. Since Counts I and II do not state a claim, Count III cannot survive and merits no detailed discussion.

Procedural Standard of Review

The City moves to dismiss all three counts under section 2-615 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Iseberg v. Gross*, 366 Ill. App. 3d 857, 860 (1st Dist. 2006). In reviewing the sufficiency of a complaint, the Court accepts as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). The Court construes the allegations in the complaint in the light most favorable to the plaintiff. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12 (2005). Thus, a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Canel v. Topinka*, 212 Ill. 2d 311, 318 (2004). Illinois is a fact pleading jurisdiction, meaning that the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions. *Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997); *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). A facial challenge to the constitutionality of a statute presents a question of law that may be decided on a 2-615 motion to dismiss. *Village of Schaumburg v. Doyle*, 277 Ill. App. 3d 832, 842 (1st Dist. 1996).

Count I – Plaintiffs' Challenge to the City's Red Light Camera Program

Count I of Plaintiffs' Complaint seeks a declaratory judgment that the City of Chicago's red light camera program is invalid. It raises numerous intertwined issues of constitutional, statutory, and municipal law. In order to address these issues, the Court must first review the legislative scheme pursuant to which the program operates.

A. Overview of the Legislative Scheme

The City's red light camera program operates pursuant to chapter 9-102 of the Chicago Municipal Code. The City first adopted chapter 9-102 in 2003 in purported exercise of its authority as a home rule municipality. At the time, there was no state legislation that specifically authorized the use of red light cameras to ticket vehicles in Illinois, and the parties dispute whether the City's enactment of chapter 9-102 in 2003 ran afoul of certain provisions of the Illinois Vehicle Code, 625 ILCS 5/1-100, *et seq.*, and the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.* The Vehicle Code, however, was substantially amended in 2006 pursuant to Public Act 94-795. Under the amendments set forth in Public Act 94-795, the Illinois Vehicle Code now authorizes the implementation of "automated traffic law enforcement system[s]" to "produce recorded images of motor vehicles entering an intersection against a red signal indication[.]" These amendments, however, were only made applicable "to the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties." P.A. 94-795, *codified in* 625 ILCS 5/11-208.6(m). The relevant provisions of chapter 9-102, the pre-2006 Illinois Vehicle and Municipal Codes, and Public Act 94-795 are discussed in greater detail below.

1. Chapter 9-102 of the Chicago Municipal Code

Chapter 9-102 was adopted by the Chicago City Council on July 9, 2003. (Coun. J. 7-9-03, p. 4349, § 1).[2] The resolution to adopt chapter 9-102 recites, "[t]he City of Chicago is a home rule unit of government as defined in Article VII, Section 6(a) of the Illinois Constitution and, as such, may exercise any power and perform any function pertaining to its government and

2. The City Council's Journal of Proceedings may be accessed on the City Clerk's website at http://chicityclerk.com/legislation-records/journals-and-reports/journals-proceedings (last accessed Feb. 17, 2016).

affairs," and "[t]he promotion of public safety within its borders is a matter pertaining to the government and affairs of the City of Chicago." (Coun. J. 7-9-03, p. 4351). The resolution then recites several safety statistics about injuries and deaths caused by red light violations. (*Id.*) The recitals then conclude, "[a]n automated red light enforcement system will complement enforcement of existing laws by permitting the imposition of sanctions even when law enforcement officers do not observe a violation of law and thus cannot charge the driver of a vehicle with a violation of the Illinois Vehicle Code," and "[t]he adoption of an automated red light enforcement system will result in a significant reduction in the number of red light violations and / or accidents within the City of Chicago." (*Id.*)

As adopted in 2003,[3] section 9-102-010(a) of the Chicago Municipal Code provided, "The purpose of this chapter is to provide for the establishment of an automated red light enforcement system which shall be administered by the Department of Transportation and the Department of Revenue and enforced through a system of administrative adjudication within the Department of Administrative Hearings." Chi. Muni. Code § 9-102-010(a) (2003) (as stated in Coun. J. 7-9-03 at p. 4352). Section 9-102-010(b) provided:

> The system shall utilize a traffic control signal monitoring device which records, through photographic means, the vehicle and the vehicle registration plate of a vehicle operated in violation of Section 9-8-020(c) and Section 9-16-030(c). The photographic record shall also display the time, date and location of the violation.

Chi. Muni. Code. § 9-102-010(b) (2003) (as stated in Coun. J. 7-9-03 at p. 4352). Sections 9-8-020(c) and 9-16-030(c) of the Chicago Municipal Code prohibit drivers from entering an intersection when facing a steady red light signal.

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3. The Court will quote from the 2003 version of chapter 9-102 here because Plaintiffs challenge whether the City had authority to adopt that version of the ordinance in 2003.

The 2003 and current versions of section 9-102-020(a) both provide that the registered *owner* of a vehicle photographed to be in violation of section 9-9-020(c) or section 9-16-030(c) shall be liable for a fine. Chi. Muni. Code § 9-102-020. Section 9-102-020(c) goes on to expressly state that "nothing in this section shall be construed to limit the liability of an *operator* of a vehicle for any violation of section 9-8-020(c) or section 9-16-030(c)." *Id.* (emphasis added). Section 9-102-040 of the 2003 ordinance provided that a person charged with a camera-recorded red light violation could contest the charge at an administrative hearing or through adjudication by mail. Chi. Muni. Code § 9-102-040 (2003) (as stated in Coun. J. 7-9-03 at p. 4352).

2. The Pre-2006 Illinois Vehicle Code and Illinois Municipal Code

Plaintiffs allege that the City lacked authority to enact chapter 9-102 in 2003. In support, the Complaint refers to a June 22, 1992 letter opinion by the Illinois Attorney General, which concluded that alternative traffic enforcement ordinances that provide for administrative adjudication of moving vehicle violations were invalid because they conflicted with provisions of the Illinois Vehicle Code and the Illinois Municipal Code. 1992 Op. Atty. Gen. (92-013) (June 22, 1992). The Attorney General specifically cited to sections 11-207, 11-208.1, and 11-208.2 of the Illinois Vehicle Code, which, as quoted in the opinion, provided:

> § 11-207. Provisions of Act uniform throughout state. The provisions of this Chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and *no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein.* Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter, but such regulations shall not be effective until signs giving reasonable notice thereof are posted.
>
> § 11-208.1. Uniformity. *The provisions of this Chapter of this*

> *Act*, as amended, and the rules and regulations promulgated thereunder by any State Officer, Office, Agency, Department or Commission, *shall be applicable and uniformly applied and enforced* throughout this State, in all other political subdivisions and *in all units of local government*.
>
> § 11-208.2. Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208 and 11-209 of this Chapter of this Act.

Id. at pp. 5-6 (emphasis in original). The Attorney General additionally cited to sections 11-80-1 and 11-80-20 of the Illinois Municipal Code, which, as quoted in the opinion, provide that a municipality's authority to regulate traffic on public ways is subject to the provisions of the Illinois Vehicle Code. *Id.* at 6. The Attorney General reasoned that the Illinois Vehicle Code requires uniformity in the *method* and *manner* of enforcement of traffic regulations in addition to uniformity in the regulations' substance. *See id.* at 6-7. The Attorney General accordingly opined that municipal ordinances that allow for administrative adjudication of traffic violations are invalid because they "create an entire enforcement mechanism which deviates significantly from that created by statute." *Id.* at 7.

Plaintiffs also allege that section 1-2.1-2 of the Illinois Municipal Code deprived the City of authority to adopt chapter 9-102. Section 1-2.1-2, in relevant part, permits home rule municipalities to administratively adjudicate violations of any ordinance "except for . . . (ii) any offense under the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.] or a similar offense that is a traffic regulation governing the movement of vehicles." 65 ILCS 5/1-2.2-2. According to Plaintiffs, chapter 9-102 was *void ab initio* because it provided for administrative adjudication of a traffic violation in violation of section 1-2.2-2.

3. Public Act 94-795

Several years after the adoption of chapter 9-102, the Illinois General Assembly enacted

Public Act 94-795 to expressly authorize certain municipal units within the state to implement red light camera enforcement systems like the City's program.

Public Act 94-795 first amended section 11-208 of the Illinois Vehicle Code, which governs the powers of local authorities to enforce the Vehicle Code, and added a new subsection (f). P.A. 94-795. The newly added subsection (f) provides, "a municipality or county designated in Section 11-208.6 may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of this Code or a similar provision of a local ordinance and imposing liability on a registered owner of a vehicle used in such a violation." *Id.*, *codified in* 625 ILCS 5/11-208(f).

Next, Public Act 94-795 amended section 11-208.3 of the Illinois Vehicle Code to authorize certain municipalities to administratively adjudicate "automated traffic law violations as defined in Section 11-208.6." P.A. 94-795, *codified in* 625 ILCS 5/11-208.3(a).

Section 11-208.6, captioned "Automated traffic law enforcement system," was newly added to the Illinois Vehicle Code by Public Act 94-795. Section 11-208.6(a) defines "automated traffic law enforcement system" as:

> [A] device with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a red light signal indication in violation of Section 11-306 of this Code or a similar provision of a local ordinance.

P.A. 94-795, *codified in* 625 ILCS 5/11-208.6(a). Section 11-208.6 further sets forth the lawful parameters for the implementation of automated traffic law enforcement systems. For instance, section 11-208.6(c) prohibits counties and municipalities from using automated traffic law enforcement systems to record a vehicle's speed. P.A. 94-795, *codified in* 625 ILCS 5/11-

208.6.[4] Section 11-208.6(d) prescribes the mandatory notice requirements for violations captured by automated traffic law enforcement systems. *Id.* Finally, section 11-208.6(m) expressly limits the applicability of section 11-208.6 "to the counties of Cook, DuPage, Kane, Lake, Madison, St. Clair, and Will and to municipalities located within those counties." *Id.*

Public Act 94-795 became effective on May 22, 2006. In *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008 ¶ 7, the Appellate Court held that the amendments wrought by Public Act 94-795 "comprehensively provided for the use of automated red light cameras and an administrative process to impose civil penalties on registered vehicle owners when their vehicles are used to commit red light camera violations." Accordingly, there is no question that Public Act 94-795, if constitutional, lifted any previous limitation on the authority of covered municipalities to adopt red light camera ordinances like chapter 9-102.

B. Relevant Constitutional Provision

Plaintiffs' contend that by limiting the amendments' application to eight specifically named counties, Public Act 94-795 violates Article IV, section 13 of the Illinois Constitution. Article IV, section 13 provides:

> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Ill. Const. 1970, art. IV, § 13. Plaintiffs allege that Public Act 94-795 is a facially local law and accordingly seek a declaration that the act is unconstitutional.

C. Plaintiffs' Standing to Challenge the Red Light Cameras

There are three remaining plaintiffs in this case. All received tickets after the enactment

4. This absolute prohibition has since been partly lifted. *See* P.A. 97-672, *codified in* 625 ILCS 5/11-208.6(c), 5/11-208.8.

of Public Act 94-795. The Court has not certified any class.

Plaintiff Terie L. Kata alleges that she was wrongfully ticketed for a red light violation recorded by an automated camera on November 16, 2011. The City issued ticket number 700378107 to Ms. Kata on December 4, 2011. Ms. Kata paid the ticket after availing herself of an administrative hearing, where she was not permitted to raise her current defenses to the City's authority. She alleges that she paid the fine under coercion of law and that the City was unjustly enriched in the amount of her fine, $100.00.

Plaintiff Maureen Sullivan alleges that she was wrongfully ticketed for a red light violation recorded by an automated camera in February 2011. The City issued ticket number 7003220605 to Ms. Sullivan on March 17, 2011. She alleges that she paid the ticket under coercion of law and that the City was unjustly enriched in the amount of her fine, $100.00.

Plaintiff Niraj Rami alleges that he was wrongfully ticketed for a red light violation recorded by an automated camera in March 2014. The City issued ticket number 7005561190 to Mr. Rami on March 30, 2014. Mr. Rami paid the ticket after availing himself of an administrative hearing, where he was not permitted to raise his current defenses to the City's authority. He alleges that he paid the fine under coercion of law and that the City was unjustly enriched in the amount of his fine, $100.00.

D. Analysis of Count I

Plaintiffs' challenge to the red light camera program is multi-tiered and requires the Court to evaluate both 1) the constitutionality of Public Act 94-795, and 2) the current validity of chapter 9-102. Plaintiffs allege that the City initially lacked authority to adopt chapter 9-102 in 2003 because the ordinance conflicted with the versions of the Illinois Vehicle and Municipal Codes then in effect. Plaintiffs then allege that chapter 9-102 remains invalid because Public Act

94-795 is unconstitutional and its amendments are void. Alternatively, Plaintiffs allege that even if Public Act 94-795 were constitutional, chapter 9-102 was never effectively adopted because the enactment of enabling legislation is not sufficient to revive a void ordinance. *River Forest v. Midwest Bank & Trust Co.*, 12 Ill. App. 3d 136, 140 (1st Dist. 1973). Instead, Plaintiffs contend that the City was required to re-adopt chapter 9-102 after the enactment of Public Act 94-795, which they allege the City has never done.

The City, in response, argues that chapter 9-102 was never *void* and that, at most, it was merely preempted. The City then argues that the 2006 enactment of Public Act 94-795 operated to lift any preemption and ratify the ordinance.

The Court is mindful of its obligation to avoid constitutional questions whenever possible. *See, e.g., Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003) ("A court will consider a constitutional question only where essential to the disposition of a case."). The resolution of constitutional issues is unavoidable in this case, however.

Plaintiffs all received their tickets after 2006, and so they lack standing to challenge the pre-2006 validity of chapter 9-102. Thus, the challenge cannot be resolved by simply holding that the City Council exceeded its authority when it enacted chapter 9-102 in 2003. Instead, the Court must determine what effect the enactment of Public Act 94-795 had on the validity of the ordinance after that statute was passed. Consequently, whether Public Act 94-795 offends the special legislation clause is squarely presented and must be resolved in order to pass on Plaintiffs' remaining contentions. Accordingly, Plaintiffs' constitutional challenge to Public Act 94-795 is addressed first.

1. Constitutional Challenge to Public Act 94-795

Plaintiffs' constitutional challenge to Public Act 94-795 is brought under Article IV,

section 13 of the Illinois Constitution. Article IV, section 13 provides:

> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Ill. Const. 1970, art. IV, § 13. Plaintiffs allege that Public Act 94-795 is a facially local law that should be declared unconstitutional because a general law could have been made applicable.

A claim under Article IV, section 13 is generally judged by the same standard that is used in considering a claim that equal protection has been denied. *Chicago Nat'l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 368 (1985). In *In re Belmont Fire Protection District*, 111 Ill. 2d 373, 380 (1986), the Supreme Court articulated a two-prong rational basis test for evaluating claims under the special or local legislation clause that, as here, do not involve an inherently suspect class. First, a statutory classification "must be based upon a rational difference of situation or condition found to exist in the persons or objects upon which the classification rests." *Id.* Second, "the classification must also bear a rational and proper relation to the evil to be remedied and the purpose to be attained by the legislation." *Id.* Additionally, the statutory purpose must relate to a legitimate state interest. *Chicago Nat'l League*, 111 Ill. 2d at 368.

Plaintiffs argue that Public Act 94-795 is an "indisputably" and "unabashedly" local law because it only affects a portion of the state, namely the eight specifically-identified counties. (Pl. Resp. Br. at p. 15). They further argue that Public Act 94-795 "does not contain any 'classification' to be analyzed" under the above-described two-prong test "because 'Acts relating to local political subdivisions by name are a form of identification and not classification.'" (*Id.* (quoting 2 *Sutherland Statutory Construction* § 40.8 (7th Ed.))). Along these lines, Plaintiffs distinguish "local" laws from "special" laws and suggest that only "special" laws contain classifications that are subject to the two-step rational basis inquiry. When a law simply

identifies areas of the state that are affected by the statute, Plaintiffs argue that the law is *per se* local and the only relevant inquiry under the 1970 Constitution is whether a general law could have been made applicable. Plaintiffs argue that a "general law" could have been made applicable here by simply removing the geographic limitation in section 11-208.6(m) so Public Act 94-795 would apply throughout the state.

Plaintiffs are correct that there is a technical distinction between "special" and "local" legislation, but that distinction is not along the lines that they suggest. As used in the Illinois Constitution, "local law" means a law relating to a portion, only, of the territory of the State. *Bridgewater v. Hotz*, 51 Ill. 2d 103, 109 (1972). By contrast, special legislation confers a special benefit or exclusive privilege on a person or group of persons similarly situated. *Fireside Chrysler-Plymouth, Mazda, Inc. v. Edgar*, 102 Ill. 2d 1, 4 (1984). Stated succinctly, local laws expressly refer to places, whereas special legislation expressly refers to persons.

Despite this technical distinction, special and local laws are treated alike by the Illinois Constitution. That is because the purpose of Article IV, section 13 is to prohibit similarly situated people (or places) from being treated differently, if it is reasonably possible for them to be treated the same. *Rodgers v. Whitley*, 282 Ill. App. 3d 741, 749 (1st Dist. 1996). Thus, a "general law" is one that applies to all who are similarly situated at the time of passage or in the future. *Bd. of Educ. v. Peoria Federation of Support Staff, Security/Policeman's Benevolent & Protective Assoc. Unit No. 114*, 2013 IL 114853, ¶ 44.

Further, the mere fact that Public Act 94-795 only affects a portion of the state is not dispositive and does not remove the statute from rational basis inquiry. Plaintiffs suggest that the framers of the 1970 Constitution intended for such legislation to be subjected to a heightened level of scrutiny. However, since the 1970 Constitution took effect, the Illinois Supreme Court

has repeatedly affirmed the courts' obligation to engage in rational basis review to determine whether a law is local, special, or permissibly general. *Bridgewater*, 51 Ill. 2d at 112; *Belmont*, 111 Ill. 2d at 380; *Cutinello*, 161 Ill. 2d at 410; *In re Village of Vernon Hills*, 168 Ill. 2d 117, 123 (1995); *Bd. of Education*, 2013 IL 114853, ¶ 54. In other words, if a legislative act affects only certain areas of the state, it will still be upheld as a general law if the legislature could have rationally determined that those areas are uniquely situated. *Bd. of Education*, 2013 IL 114853, ¶ 54. As the Supreme Court explained in *Bridgewater*:

> A law may be general notwithstanding that it may operate only in a single place where conditions necessary to its operation exist. A law is general not because it embraces all of the governed, but because it may, from its terms, embrace all who occupy a like position to those included. If there is a reasonable basis for differentiating between the class to which the law is applicable and the class to which it is not, the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation or control, and may pass laws applicable only to such persons or objects. In this regard, it is well settled that an act is not local or special merely because of a legislative classification based upon population, or territorial differences. Such classifications will be sustained where founded upon a rational difference of situation or condition existing in the objects upon which it rests, and where there is a reasonable basis for the classification in view of the objects and purposes to be accomplished.

51 Ill. 2d at 111-12 (citations omitted). An act, thus, will only be declared local or special legislation if it fails rational basis review, and courts only ask whether a general law can be made applicable once there has been a threshold determination that a classification is not rational.

Even so, Plaintiffs argue that Public Act 94-795 does not contain a reviewable classification because it simply identifies the affected areas of the state by name. In other words, the statute does not expressly state the reason that these counties and municipalities are different from the remaining areas of the state.

In *Cutinello v. Whitley*, 161 Ill. 2d 409 (1994), the Supreme Court upheld a similarly structured statute that only applied to three specifically-identified counties. There, the act under review provided:

> The county board of the counties of Du Page, Kane and McHenry may, by an ordinance or resolution adopted by an affirmative vote of a majority of the members elected or appointed to the county board, impose a tax upon all persons engaged in the county in the business of selling motor fuel[.]

Id. at 414. The statute further required that the county tax revenues would be used to fund transportation infrastructure. *Id.* Pursuant to the authority granted by the statute, the counties of Du Page, Kane, and McHenry all passed fuel taxes. *Id.*

As here, the *Cutinello* plaintiffs challenged the authorizing statute as local legislation because the legislature did not articulate any reason for limiting the act's applicability to the three named counties. The Supreme Court rejected this argument, noting, "The rational basis test does not require such an explanation. It requires only that there be a reasonable relationship between the challenged legislation and a conceivable, and perhaps unarticulated interest." *Id.* at 420. The Supreme Court then held the act constitutional under rational basis scrutiny, reasoning that the legislature could have rationally determined that the need for transportation financing was greater in the three named counties, which at the time were experiencing higher population growth than the rest of the state. *See id.*

Here, Plaintiffs initially respond that *Cutinello* was incorrectly decided. They take the position that any law that simply identifies counties and municipalities for unique treatment is impermissibly local. However, Plaintiffs acknowledge, as they must, that this Court is bound by *Cutinello*. "'[I]t is fundamental to our judicial system that 'once our supreme court declares the law on any point, its decision is binding on all Illinois courts.'" *Robinson v. Johnson*, 346 Ill.

App. 3d 895, 907 (1st Dist. 2004) (quoting *People v. Crespo*, 118 Ill. App. 3d 815, 822 (1st Dist. 1983) (in turn quoting *People v. Jones*, 114 Ill. App. 3d 576, 585 (1st Dist. 1983)). Accordingly, *Cutinello* disposes of any argument that a statute's simple identification of affected counties and municipalities, by itself, renders the statute impermissibly local. Instead, the Court must treat the Act's list of named counties and municipalities as a classification subject to rationality review.

In short, Plaintiffs invite the Court to reach a conclusion that Public Act 94-795 is a local law untethered to the analytical framework mandated by the many cases cited above. This Court must decline that invitation. Having rejected Plaintiffs' central argument, the Court moves on to apply the two-prong rational basis inquiry to determine a) whether the General Assembly could rationally determine that the areas affected by Public Act 94-795 are uniquely situated and, if so, b) whether the difference in situation bears a rational relation to a legitimate purpose of the statute.

a. Prong 1: Unique Situation of the Affected Counties and Municipalities

The first prong of the rational basis inquiry asks whether the statutory classification is based upon a rational difference in situation or condition. *Belmont*, 111 Ill. 2d at 380. Classifications drawn by the General Assembly are presumed to be constitutionally valid, and any doubts must be resolved in favor of upholding them "if any set of facts can be reasonably conceived which justify distinguishing the class to which the law applies from the class to which the statute is inapplicable." *Bilyk v. Chicago Transit Authority*, 125 Ill. 2d 230, 236 (1988). "The party who attacks the validity of a classification bears the burden of establishing its arbitrariness." *Vernon Hills*, 168 Ill. 2d at 122.

The City asserts that the eight counties affected by Public Act 94-795 are uniquely

situated because they are among the eight most populous counties in the state and because they are closest in proximity to the region's major metropolitan centers, Chicago and St. Louis. Both population and proximity to great centers of population may be upheld as reasonable bases for classification. *See, e.g. People ex rel. Cnty. of DuPage v. Smith*, 21 Ill. 2d 572, 578 (1961).

Plaintiffs respond that if the General Assembly's bases for classification were indeed population and proximity, the statute is both under- and over-inclusive. At the county level, the Complaint alleges that Public Act 94-795 is under-inclusive because it does not include Winnebago County. The Complaint cites to 2010 census data showing Winnebago County's population at 295,266. That figure is approximately 9% greater than the populations of both Madison County (269,282) and St. Clair County (270,056), which are covered by the Act.

The Complaint also attacks the Act's classification at the municipal level. It alleges that the population of the affected counties is not a reasonable proxy for the population of the affected municipalities. In support, the Complaint alleges that of the fifteen most heavily populated municipalities in Illinois, more than a third (Rockford, Springfield, Peoria, Champaign, Bloomington, and Decatur) are excluded from the ambit of Public Act 94-795. Meanwhile, many thinly populated towns are included. For example, the Village of Lenzburg, with a population of only 521 in St. Clair County, is authorized to install red light cameras, but according to the Complaint, the village is so sparse that it lacks a traffic signal. The Village of Symerton, located in Will County, is even smaller, with a population of just eighty-seven.

The Complaint likewise alleges that the general location of the affected counties is not a reasonable proxy for the proximity of the affected municipalities to the major metropolitan areas. The City of Kankakee, which is not included in Public Act 94-795, is located 59.5 miles from downtown Chicago via its direct access to a major interstate highway, I-57. Meanwhile, the City

of Harvard is located 69.6 miles from Chicago and is nowhere near an interstate highway, but it is permitted to install red light cameras because it is located within McHenry County. Oswego, located 44.8 miles southwest of Chicago in Kendall County, may not install red light cameras. Symerton, located 56.7 miles south of downtown Chicago, is authorized to do so.

Plaintiffs' arguments are valiant but ultimately unavailing. Under *Cutinello*, the legislature is entitled to great deference in demarcating classifications and "mathematical precision in creating a classification is not required." 161 Ill. 2d at 421; *see also Chicago Nat'l League*, 108 Ill. 2d at 372 ("Classifications are not required to be precise, accurate or harmonious so long as they accomplish the legislative purpose.") Indeed, as the Supreme Court noted in *Cutinello*, "Review of statistics will always reveal another county that could have been included in a classification. For this reason, 'a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.'" 161 Ill. 2d at 421-22 (quoting *FCC v. Beach Communications*, 508 U.S. 307, 309 (1993)). Applying these principles, the Supreme Court in *Cutinello* excused the absence of Lake County from the statute under review, even though Lake County was then experiencing a similar rate of population growth and greater absolute numerical growth than some of the counties affected by the statute. 161 Ill. 2d at 421-22.

These principles also control here. The legislative classification in Public Act 94-795, based on population and proximity, while imperfect, is not based on an irrational difference in situation or condition. It is not disputed that the eight counties affected by Public Act 94-795 are among the most populous in Illinois. They are also closest in proximity to the state's most highly populated metropolitan areas. The overlap of these distinguishing characteristics is key and explains the absence of Winnebago County, which is more populous than some of the

affected counties but also more remote from the most populated metropolitan areas.

Further, as *Cutinello* illustrates, the legislature is entitled to great deference and leeway in drawing statutory lines. Just as deference allowed the General Assembly to exclude Lake County from the statute in *Cutinello*, it allows the legislature to exclude Winnebago County from Public Act 94-795. This deference also permits the legislature to broadly classify municipalities based on the characteristics of the counties in which they reside. Accordingly, Public Act 94-795 satisfies the first prong because the legislature could have rationally concluded that the affected counties and municipalities were uniquely situated. The classification is not based on an arbitrary distinction.

b. Prong 2: Relationship Between Statutory Classification and Purpose

The second prong of the constitutional analysis asks whether the classification bears a rational relationship to a legitimate purpose of the statute. Again, this prong of the analysis is guided by *Cutinello*. There, the Supreme Court recognized, "population and territorial differences constitute reasonable bases for addressing transportation and traffic problems." 161 Ill. 2d at 418.

Here, the General Assembly could have rationally concluded that the population and territorial differences discussed above justify the availability of red light cameras to address local traffic problems. It was rational for the General Assembly to presume that there are more cars and intersections in the affected areas. As such, the occurrence of red light violations is also presumably higher. Further, because more cars are likely to be near an intersection at any given time in the affected areas, the risk of a serious accident occurring as a result of a red light violation goes up. Accordingly, the legislature could have rationally concluded that these areas have different traffic enforcement needs than the rest of the state.

These differing needs are illustrated by the legislative history of Public Act 94-795, which Plaintiffs recite extensively in their Complaint and briefs. The history shows that a prior bill, House Bill 21, was nearly identical to Public Act 94-795 except that it was applicable throughout the state. *See* HB 21, 94th Gen. Assemb. (2005). House Bill 21, however, failed to pass in the Illinois Senate. *See* Sen. Tr., 94th Gen. Assemb., 45th Legislative Day at p. 59 (May 20, 2005). The bill that eventually became Public Act 94-795, House Bill 4835, was also applicable throughout the state when first introduced. *See* HB 4835, 94th Gen. Assemb. (as introduced Jan. 19, 2006 by Rep. Angelo Saviano). House Bill 4835 was later amended to limit its application to the eight affected counties. When questioned why these counties were chosen on the senate floor, House Bill 4835's senate sponsor responded:

> [A]t the request of some Members in the – from both parties in the Transportation committee, they indicated they didn't want to have this option in their counties, so we limited it to the more populous counties.

Sen. Tr., 94th Gen. Assemb., 94th Legislative Day at p. 22 (March 29, 2006). With the bill amendment in place, House Bill 4835 passed and was signed into law as Public Act 94-795. This legislative history suggests that the more populous counties had local traffic needs and concerns that were different from those in the rest of the state.

Plaintiffs argue that if red light cameras do, in fact, increase roadway safety,[5] it is a benefit that should be available throughout the state. After all, intersections and traffic accidents are not unique to highly populated areas. However, as the Supreme Court in *Cutinello* recognized, "[t]ransportation problems may exist to a lesser degree in other parts of the State" and "the legislature is not bound to pass one law meeting every exigency, but may consider degrees of evil." 161 Ill. 2d at 422. Further, "[t]he legislature need not choose between

5. The actual safety benefit of red light cameras is highly contested but ultimately irrelevant to Plaintiffs' local legislation challenge.

legislating against all evils of the same kind or not legislating at all. Instead it may choose to address itself to what it perceives the most acute need." *Chi. Nat'l League*, 108 Ill. 2d at 367. Here, the legislature could have rationally concluded that the more populated areas had the most acute need for red light cameras.

Plaintiffs also attempt to distinguish *Cutinello* and argue that this case is more analogous to *Belmont* and *In re Village of Vernon Hills*, 168 Ill. 2d 117 (1995). In both of those cases, the Supreme Court struck down statutes that allowed municipalities to change fire districts as long as those municipalities sat in counties within a defined population range. The Supreme Court held that the county-level classifications were not rationally related to the purpose of the statutes, reasoning in *Vernon Hills* that, "as in *Belmont*, there is no relationship whatsoever between *county* population and the need for *municipalities* to consolidate fire protection districts." 168 Ill. 2d at 129 (emphasis in original).

Plaintiffs argue that Public Act 94-795, which similarly confers power upon municipalities based on county population, is also unconstitutional. *Belmont* and *Vernon Hills*, however, are distinguishable on their subject matter. Simply put, fire redistricting involves a different set of concerns than transportation. In *Belmont* and *Vernon Hills*, the Supreme Court reasoned that the fire redistricting classifications must be drawn at the municipal level because they address fire protection needs that are specific to individual municipalities. By contrast, transportation and traffic problems are more regional concerns and are more readily shared by municipalities across a county. Accordingly, the county-level classification is permissible given the subject of the legislation.

In short, Public Act 94-795's population- and proximity-based classification is rationally related to the traffic problems that the statute was enacted to address. Accordingly, the second

prong of the rational basis analysis is satisfied.

c) Conclusion: Public Act 94-795 does not violate Article IV, Section 13

For the foregoing reasons, Public Act 94-795 is not a local law and does not violate Article IV, section 13 of the Illinois Constitution. Public Act 94-795 is not unconstitutional on that ground.

2. The Validity of Chapter 9-102

Plaintiffs next contend that even if Public Act 94-795 is constitutional, its enactment in 2006 did not automatically revive chapter 9-102 because the ordinance was void *ab initio* when it was first adopted in 2003. According to Plaintiffs, the pre-2006 Vehicle and Municipal Codes deprived the City of any authority to administratively adjudicate moving violations captured by red light cameras. Plaintiffs then cite to a number of cases holding that when a municipal ordinance is void because the municipality lacked power to adopt it, subsequent enabling legislation will not by itself give the void ordinance effect. *River Forest v. Midwest Bank & Trust Co.*, 12 Ill. App. 3d 136, 140 (1st Dist. 1973); *see also People ex rel. Larson v. Thompson,* 377 Ill. 104, 113-14 (1941). That is because a void ordinance has "no legal existence whatsoever," *Two Hundred Nine Lake Shore Drive Bldg. Corp. v. Chicago*, 3 Ill. App. 3d 46, 51 (1st Dist. 1971), and is "inoperative as though it had never been passed." *Dean Milk Co. v. Aurora*, 404 Ill. 331, 338 (1949). Instead, the municipality is required to re-adopt the ordinance subsequent to the enabling legislation. *River Forest*, 12 Ill App. 3d at 140.

The City initially responds that chapter 9-102 was valid when it was first enacted because it did not conflict with the Vehicle Code or the Municipal Code and because the City has inherent home rule authority to regulate traffic within its borders. Alternatively, the City argues that to the extent chapter 9-102 conflicted with the Illinois Vehicle and Municipal Codes, those

statutes merely preempted the ordinance prior to 2006. Consequently, the City argues that the ordinance was never void, and the constitutional enactment of Public Act 94-795 lifted any preemption on chapter 9-102 in 2006, thus giving life to the ordinance. Thus, the City argues chapter 9-102 is valid and enforceable.

As earlier stated, none of the Plaintiffs have standing to challenge the City's pre-2006 authority to enforce chapter 9-102, and the actual pre-2006 validity of chapter 9-102 need not be decided if chapter 9-102 could have been revived by Public Act 94-795. So, the Court turns first to the City's alternative argument.

The City primarily relies on *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1 (1993), to argue that preempted ordinances can be given effect by subsequent state legislation without the express need for reenactment. *Lily Lake* involved a somewhat complicated series of legislative enactments and so merits detailed discussion.

At core, *Lily Lake* concerned the authority of McHenry County to enforce a 1979 zoning ordinance. *Id.* at 5. The ordinance required surface mining operators to submit a reclamation plan and bond to the county in order to receive a special use permit for surface mining. *Id.* at 4-5. The reclamation plan and bond would have essentially required the operators and owners to restore the property to its pre-mining condition upon the completion of surface mining operations. *Id.* at 5.

McHenry County was a non-home rule unit of local government, and so it could exercise only those powers expressly granted to it by state statute and the Illinois Constitution. *Id.* at 6. McHenry County adopted its 1979 ordinance in exercise of authority purportedly granted by the General Assembly in the County Zoning Act of 1935. *Id.*

In 1988, an operator ceased all surface mining operations on a parcel in McHenry County

without restoring the property. *Id.* at 5. Neighboring landowners brought a mandamus action to compel McHenry County to enforce the 1979 ordinance and to compel the owner/operator to restore the property to its pre-mining condition. *Id.*

In defense, McHenry County argued that its 1979 ordinance was void because it was enacted without authority. *Id.* at 7. According to McHenry County, the General Assembly repealed the relevant provisions of the County Zoning Act of 1935 by implication when it adopted the Illinois Environmental Protection Act of 1970 (IEPA) and the Surface-Mined Land Conservation and Reclamation Act of 1971 (the Reclamation Act). Thus, according to McHenry County, it had no authority to adopt the ordinance in 1979 because the enabling provisions of the 1935 County Zoning Act had already been repealed by implication. *Id.* Alternatively, McHenry County argued that the IEPA and Reclamation Act preempted its local authority to enforce the zoning ordinance because those statutes gave the state exclusive authority to regulate surface mining facilities. *Id.* at 13.

The Supreme Court began its discussion by distinguishing between the separate doctrines of repeal by implication and preemption. *Id.* at 8. The Supreme Court explained that "[t]he doctrine of repeal by implication is applied when two enactments of the *same* legislative body are irreconcilable." *Id.* (emphasis in original). When a statute is repealed by implication, it is legally eliminated and "the legislature must expressly reenact a statute which has been repealed by implication to render it valid and enforceable again." *Id.* By contrast, preemption occurs "where enactments of two unequal legislative bodies (*e.g.* Federal and State) are inconsistent." *Id.* When preemption occurs, the subordinate enactment "is suspended and rendered unenforceable by the existence of the superior legislative body's enactment." However, a preempted enactment is not legally eliminated, and "the repeal of the preempting statute revives

or reinstates the preempted statute without express reenactment by the legislature." *Id.*

The Supreme Court then addressed the merits of the parties' arguments. First, it rejected the County's argument that the IEPA and Reclamation Act repealed the County Zoning Act by implication. *Id.* at 9. The Supreme Court reasoned that the state enactments served different purposes. *Id.* The County Zoning Act was enacted to confer power upon municipalities to regulate local land use, whereas the IEPA was enacted to establish "a unified, statewide program to restore, protect and enhance the quality of the environment." *Id.* at 9-10. These purposes were not incompatible because "[a] county which exercises its statutory authority to regulate and restrict the use of land does not necessarily violate the terms of the IEPA." *Id.* at 10. Thus, the relevant provisions of the County Zoning Act were still in effect in 1979 and conferred statutory authority upon the County to adopt the 1979 zoning ordinance. *Id.*

The Supreme Court then turned to McHenry County's alternative argument that the IEPA and Reclamation Act preempted the ordinance. *Id.* The Supreme Court held that it did need to directly decide this issue. *Id.* Instead, the Supreme Court determined that even if it assumed, without deciding, that the IEPA and/or the Reclamation Act immediately preempted the ordinance upon its adoption in 1979, the preemption was lifted in 1981 when the General Assembly amended the IEPA and Reclamation Act. *Id.* at 13-14. After the 1981 amendments went into effect, "counties clearly had the authority to regulate surface mining facilities concurrently with the state." *Id.* at 14.

Like the Plaintiffs here, McHenry County argued that even if the preemption was lifted, the 1981 amendments did not revive the 1979 ordinance because the ordinance was void at the time of its enactment. *Id.* McHenry County accordingly argued, as the Plaintiffs do here, that it was required to reenact the ordinance after the preemption was lifted. *Id.* The Supreme Court

rejected this argument. It reasoned, "An ordinance which is preempted is not null and void. Instead, the preempted ordinance is simply suspended or rendered unenforceable as long as the conflicting legislation of a superior legislative body remains in effect." *Id.* at 15. The Supreme Court continued, "Repeal of the preempting legislation . . . revives or reinstates the preempted legislation without express reenactment." *Id.* Accordingly, the Supreme Court held that the ordinance became valid and enforceable, at the very latest, once the asserted preemption was lifted in 1981. *Id.*

Here, the City argues that *Lily Lake* applies and shows that Public Act 94-795 would have operated to lift any preemption on chapter 9-102 in 2006 and give effect to the ordinance. Plaintiffs, however, argue that *Lily Lake* is distinguishable and does not apply because, in that case, the Supreme Court found that McHenry County had express statutory authority from the County Zoning Act to *adopt* its ordinance in 1979. Any preemption by the IEPA and Reclamation Act simply prohibited the County from *enforcing* the ordinance until the conflict with the IEPA and Reclamation Act was removed. Plaintiffs argue that by contrast, here, the City had no authority to adopt a red light ordinance until the enactment of Public Act 94-795

The City responds that, unlike McHenry County, it did not need a statutory grant of authority to adopt its ordinance because the City is a home rule unit. The City argues that its power to adopt chapter 9-102 derived from the home rule provisions of the 1970 Illinois Constitution, not Public Act 94-795. Thus, the City maintains that it had inherent home rule authority to adopt chapter 9-102 in 2003, and to the extent that chapter 9-102 conflicted with provisions of the Illinois Municipal and Vehicle Codes prior to 2006, the ordinance was simply preempted by the superior legislative acts.

Plaintiffs reply that even if the City had original home rule authority to regulate traffic

within its borders, a relevant provision of the Illinois Vehicle Code expressly limited home rule units from *adopting* inconsistent ordinances. *See* 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 inconsistent herewith[.]") Since any home rule authority to adopt a conflicting ordinance was expressly taken away by the General Assembly, Plaintiffs argue, chapter 9-102 was enacted without authority, was void *ab initio*, and remains a nullity because it has not been fully readopted by the City Council since Public Act 94-795 took effect.

These arguments demonstrate that *Lily Lake* only gets the City so far. *Lily Lake* did not concern a home rule unit and does not establish that the City's home rule authority included the inherent power to adopt an ordinance like chapter 9-102. It also does not address a situation where the General Assembly expressly limited a home rule unit's power to *adopt* an inconsistent ordinance. *Lily Lake's* discussion of preemption instead established that the subordinate legislative body had authority to adopt the ordinance under review. In short, preemption there limited the *enforcement* of a lawfully adopted ordinance. *Lily Lake* does not conclusively establish that this conception of preemption applies here, where the Plaintiffs contend that the City had no authority to adopt the ordinance.

Moreover, in cases discussing the effect of the Illinois Vehicle Code on home rule units, the Appellate Court has held that home rule units had no greater power to adopt traffic ordinances than non-home rule units:

> Under chapter 11 of the Code, however, 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. While the legislature has not preempted the field of traffic regulation (see *Village of Cherry Valley v. Schuelke,*46 Ill. App. 3d 91, 93-94, 4 Ill. Dec. 411, 360 N.E.2d 158 (1977)), all municipalities are limited to enacting traffic ordinances that are consistent with the provisions of chapter

> 11 of the Code and that do not upset the uniform enforcement of those provisions throughout the state.

People ex rel. Ryan v. Village of Hanover Park, 311 Ill. App. 3d 515, 525 (1st Dist. 1999). Thus, the City's home rule power to adopt a traffic regulation was limited by statute to the same extent that non-home rule units' powers were limited.

Nonetheless, when cases discuss statutory limitations placed on the exercise of a municipal unit's home rule powers, they typically do so in terms of preemption, not voidness. *See Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 379 (2nd Dist. 1997) ("If an ordinance enacted by a home-rule unit does not pertain to that unit's government and affairs, a state statute regarding that matter will preempt the ordinance."); *see also Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 31 ("The General Assembly may, however, preempt the exercise of a municipality's home rule powers by expressly limiting that authority."); *Cherry Valley v. Schuelke*, 46 Ill. App. 3d 91, 94 (2nd Dist. 1977) ("[T]he legislature did not express the intention to preempt municipalities from regulating motor traffic.") This is because home rule powers derive from the Illinois Constitution. *See* Ill. Const. 1970, art. VII, § 6. While the Constitution permits the General Assembly to place statutory limitations on the exercise of home rule authority, a statute, by nature, cannot void the exercise of constitutionally-granted powers as if those powers do not exist. Thus, so long as the power to adopt chapter 9-102 originally derived from the Constitution, any statutory limitation on the exercise of that power would operate to preempt that power. It would not void the exercise of that power, and it would not void the ordinance. Accordingly, the Court reviews the scope of the City's home rule powers as conferred by the Illinois Constitution to determine whether those powers included the authority to adopt an ordinance like chapter 9-102.

Article VII, section 6(a) provides:

> A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Ill. Const. 1970, art. VII, § 6. The important language here grants a home rule unit authority to "exercise any power and perform any function pertaining to its government and affairs." The language, "pertaining to its government and affairs," has been interpreted to limit the scope of home rule powers to those relating to the home rule unit's own problems, not those of the state or nation. *Kalodimos v. Morton Grove*, 103 Ill. 2d 483, 501 (1984); *Park Forest v. Thomason*, 145 Ill. App. 3d 327, 330 (1st Dist. 1986). According to Article VII, section 6(m), "Powers and functions of home rule units shall be construed liberally." Ill. Const. 1970, art. VII, § 6. Further, the Supreme Court has stated Article VII, section 6 was drafted "with the intention to give home rule units the broadest powers possible." *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 30.

Broadly speaking, chapter 9-102 served three significant functions. First, it authorized the installation of red light cameras to photograph vehicles that cross an intersection against a red light. Chi. Muni. Code. § 9-102-010(b) (2003) (as stated in Coun. J. 7-9-03 at p. 4352). Second, it subjected registered owners of those vehicles to fines. *Id.* § 9-102-020. Third, it subjected those fines to administrative adjudication. *Id.* § 9-102-040. All three functions fell within the broad constitutional scope of the City's home rule powers.

With respect to the first two functions, the Appellate Court has recognized that home rule units have authority to regulate traffic within their borders unless limited by the General

Assembly. *See People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 525 (1st Dist. 1999). As noted by the City in its brief, "Regulating traffic safety for the public welfare on Chicago streets pertains to the City's government and affairs." (City. Br. at p. 18). Plaintiffs have not argued that the power to regulate local traffic falls outside the broadest constitutional scope of the City's home rule authority, and the Court has not located any authority that would support such a contention.

The power of home rule units to conduct administrative adjudications likewise derives from the Constitution. Crucially, Article VII, section 6(a) of the Illinois Constitution provides that "a home rule unit may exercise *any* power and perform *any* function pertaining to its government and affairs," and section 6(m) provides that these powers and functions are to be construed liberally. Ill. Const. 1970, art. VII, § 6 (emphasis added). Administrative adjudications are an important function of government and comfortably fall within the ambit of Article VII, section 6(a).

The constitutional origin of a home rule unit's authority to conduct administrative adjudications is recognized by the General Assembly in Division 2.1 of the Illinois Municipal Code. 65 ILCS 5/1-2.1-1, *et seq*. Section 1-2.1-2 of that Division provides:

> Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations *to the extent permitted by the Illinois Constitution* [Illinois Const., Art. I, § 1 et seq.].

65 ILCS 5/1-2.1-2 (emphasis added). Section 1-2.1-2 then excludes certain proceedings from its definition of "system of administrative adjudication," including "(i) *proceedings not within the statutory or the home rule authority of municipalities*" and, as argued relevant by Plaintiffs, "(ii) any offense under the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.] or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense

under Section 6-204 of the Illinois Vehicle Code [625 ILCS 5/6-204]." *Id.* (emphasis added). Next, section 1-2.1-10 provides, "This Division shall not *preempt* municipalities from adopting other systems of administrative adjudication *pursuant to their home rule powers*." 65 ILCS 5/1-2.1-10 (emphasis added). A treatise on Illinois municipal law states, "[Section 1-2.1-10] present[s] a clear acknowledgment by the Illinois General Assembly that a municipality may utilize administrative adjudication via the municipality's home-rule powers." Illinois Municipal Law: Organization, Operation, and Governance § 9.7 (IICLE®, 2012). This construction is also supported by the fact that section 1-2.1-10 itself refers to Division 2.1 as preempting legislation.

The foregoing analysis leads to the conclusion that any statutory limitations on the City's home rule authority to adopt chapter 9-102 would have simply preempted the ordinance. They would not have voided the ordinance. Further, as in *Lily Lake*, this Court does not need to determine whether chapter 9-102 was actually preempted prior to 2006. Instead, any asserted preemption on chapter 9-102 was lifted in 2006 with the enactment of Public Act 94-795, thus giving effect to the ordinance. The ordinance was lawfully in effect at all times relevant to Plaintiffs' claims.

3. Other Constitutional Challenges

Count I also raises a number of other constitutional challenges that received only token attention in the briefs and no attention at all during oral argument. First, paragraph 278 of the Complaint alleges that Public Act 94-795 violates Article XI, section 2 of the Illinois Constitution because it assesses a non-uniform tax or fee against owners for red light violations. The City argues that the fines assessed for red light violations are penalties, not taxes or fees, and so the uniformity clause does not apply. Plaintiffs did not respond to this argument in their brief and, thus, waived the challenge.

Second, paragraph 279 alleges that Public Act 94-795 deprives motorists of the equal protection of state laws. As alleged, this claim is largely duplicative of Plaintiffs' local legislation challenge, which the Court has already addressed at length.

Third, paragraph 282 alleges that the City's red light camera program deprives penalized owners of due process of law under the Illinois Constitution because it imposes fees on owners without any evidence that the vehicle owner committed the underlying violation. These claims were soundly rejected by the Seventh Circuit, albeit under the 14th Amendment, in *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009). "The constitutional guarantees of due process are viewed as generally the same under both the Illinois and Federal constitutions." *Gibbs v. Estate of Dolan*, 146 Ill. App. 3d 203, 206 (1st Dist. 1986). Plaintiffs have not offered any compelling reason why the Illinois Constitution affords broader due process protections than the Federal Constitution here, or why this Court should depart from *Idris*.

E. Disposition of the City's Motion to Dismiss Count I

For the foregoing reasons, the City's Motion to Dismiss Count I is granted. Public Act 94-795 does not violate the constitutional provisions asserted. Once enacted, Public Act 94-795 gave effect to chapter 9-102. Accordingly, Count I fails to state a claim.

Count II – The Plaintiff's Challenge to the City's Yellow Light Timings

Count II alleges that the City deliberately times its yellow lights to fall below an asserted 3.0-second safety minimum so it can issue more tickets and collect more revenue. Count II alleges that some owners have been issued tickets for red light violations when the duration of the yellow light was as short as 2.89 seconds. Plaintiff Niraj Rami alleges that he received a red light ticket when the red light's preceding "amber time"—the yellow light duration—was 2.9 seconds. Count II seeks a declaration that the City is not permitted to collect fines for red light

violations when the amber time falls below 3.0 seconds. Count II also seeks mandatory injunctive relief compelling the City to increase the amber times for all traffic signals to at least 3.1 seconds.

Count II fails to state a claim for a number of reasons. First, Plaintiffs have not alleged a legally-enforceable requirement for the minimum duration of yellow lights. Plaintiffs cull the alleged 3.0-second requirement from the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices ("MUTCD"). Right up front, section 1A.09 of the MUTCD states, "This Manual describes the application of traffic control devices, *but shall not be a legal requirement for their installation.*" MUTCD 2009 ed., rev. 2, § 1A.09 (emphasis added). This standard is followed by explanatory guidance:

> The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment.

Id. Along these lines, the actual standard for amber times found at section 4D.26 of the MUTCD simply states, "The duration of the yellow change interval shall be determined using engineering practices." *Id.* § 4D.26. The 3.0-second figure cited by the Plaintiffs comes up only in the explanatory guidance, which states, "A yellow change interval *should*"—not shall—"have a minimum duration of 3 seconds and a maximum duration of 6 seconds." *Id.* (emphasis added). Accordingly, a majority of jurisdictions have held that the MUTCD is nothing more than a guideline. *See, e.g., Graber v. City of Ankeny*, 656 N.W.2d 157, 162 (Iowa 2003); *Cope v. Scott*, 45 F.3d 445, 451 (D.C. Cir. 1995); *McComb v. Tamlyn*, 20 P.3d 237, 241 (Or. Ct. App. 2001) (provisions of MUTCD do not require traffic engineer to use particular signal in designing specific intersection because manual vests city engineer with discretion in making such

decisions); *Dep't of Transp. v. Sanchez*, 75 S.W.3d 24, 28-29 (Tex. App. 2001) (3.5-second clearance interval for traffic signals was set within the discretionary guidelines stated in paragraph 4B-15 of the Texas MUTCD); *Searles v. Agency of Transp.*, 762 A.2d 812, 814 (Vt. 2000); *Harmann v. Schulke*, 432 N.W.2d 671, 674 (Wis. Ct. App. 1988). *See also Zank v. Larson*, 552 N.W.2d 719, 722 n.2 (Minn. 1996) (Minnesota MUTCD "affords substantial discretion to local governmental units regarding all red clearance intervals").

Second, even if a 3.0-second legal minimum exists, Plaintiffs have not shown that they have standing to enforce the minimum. Plaintiffs first assert that the provisions of the MUTCD are enforceable in Illinois under section 11-301 of the Illinois Vehicle Code. That section, however, merely directs the Illinois Department of Transportation ("IDOT") to adopt a State manual that conforms to the MUTCD. 625 ILCS 5/11-301. It contains no language that affords citizens a private right to enforce the provisions of the MUTCD.

Plaintiffs then cite to a number of federal statutes that are equally unavailing. The first of these, 23 U.S.C. § 109(d), provides:

> On any highway project in which Federal funds hereafter participate . . . the location, form and character of . . . traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State transportation department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

This provision makes no reference to the MUTCD, and Plaintiffs make no allegation that any of the City's traffic signals have been installed with federal funds. Further, this provision confers authority upon IDOT to approve the implementation of traffic signals. It does not grant private citizens a direct right to object to the implementation of signals.

Likewise, 23 U.S.C. § 114(a) provides:

> The construction of any Federal-aid highway or a portion of a Federal-aid highway shall be undertaken by the respective State transportation departments or under their direct supervision. . . . After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

Like the other federal statute, this provision affects IDOT and does not create a private right of action. Further, it prevents IDOT from *constructing* non-conforming signals. It has no application to signals already standing.

Plaintiffs finally cite to 23 U.S.C. § 402, which requires states to adopt a highway safety program that complies with guidelines promulgated by the Secretary of Transportation. The Complaint contains a number of allegations that the less than 3.0-second duration of the City's yellow lights causes an increase in rear-end collisions and has a negative impact on roadway safety. While these allegations may be relevant to establish a duty of care in a negligence suit, they are irrelevant to Plaintiffs' claims here because none of the Plaintiffs are alleged to have been involved in a collision or suffered physical injury due to short yellow light durations.

For all of the aforementioned reasons, the City's motion to dismiss Count II is granted.

Conclusion

Plaintiffs have mounted a Herculean challenge to the City's red light camera program. Nonetheless, Public Act 94-795 withstands rational basis scrutiny, and it lifted any asserted preemption on chapter 9-102. Thus, Count I fails to state a claim. Further, Plaintiffs have not alleged any sound legal basis for the Court to order or enforce a required 3.0-second minimum duration for yellow lights, as sought in Count II. Since the restitution sought in Count III is dependent upon valid claims in Counts I and II, that count must also be dismissed.

IT IS THEREFORE ORDERED:

JUDGE RITA M. NOVAK

APR 01 2016

Circuit Court-1741

1. The City's Motion to Dismiss is granted;
2. This case is dismissed with prejudice.

ENTERED:

_____
Date

_____
Rita M. Novak
Judge Presiding