FOURTH DIVISION
January 24, 2013

No. 1-11-2559

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELIZABETH KEATING, PAUL KETZ, RANDALL D. GUINN, CAMERON W. MALCOLM, JR., CHARLIE PEACOCK, SHIRLEY PEACOCK and JENNIFER P. DiGREGORIO, individually and on behalf of all others similarly situated,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	10 CH 28652
v.	)	The Honorable Michael B. Hyman,
CITY OF CHICAGO, a Municipal Corporation,	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: The circuit court did not err in dismissing plaintiffs' complaint for failure to state

a claim because the City of Chicago's red light camera ordinance was valid and the Illinois enabling legislation was constitutional and not special local legislation. Dismissal as to the claims brought by plaintiffs Elizabeth Keating and Shirley Peacock based on lack of standing was proper because they were not issued citations from the City. As to the remaining plaintiffs, dismissal on the basis of the voluntary payment doctrine was error, as plaintiffs were under sufficient duress to pay the fines or be subject to further penalties, judgment, and attorney fees and costs. However, dismissal for failure to state a cause of action was appropriate. Chicago's red light camera ordinance was not void, as Chicago had jurisdiction to enact the provision pursuant to its home rule authority and was not in conflict with the Illinois Vehicle Code's proscription against the enactment of ordinances regulating moving violations. As Chicago had home rule authority to enact the ordinance and did not need an enabling act, the ordinance was not void either prior to or subsequent to the enabling act.

¶ 1 BACKGROUND

¶ 2 On July 9, 2003, the City of Chicago enacted an ordinance under the Chicago Municipal Code referred to as the red light camera program, which established liability and penalties for registered owners of vehicles used in violation of a red light signal. See Chicago Municipal Code. §§ 9-102-010 to 9-102-070 (added July 9, 2003). The new provisions established a red light violation and fine for the registered owner of a vehicle when the vehicle was used in a red light violation and a recorded image of the violation is recorded by an automated traffic law enforcement system. Chicago Municipal Code § 9-102-020 (added July 9, 2003). The red light camera program uses electronic monitoring devices to detect and record images of vehicles caught in an intersection in violation of a red light traffic signal. If the camera records a red light violation, the registered owner of the offending vehicle is mailed a written citation that includes copies of the photographs taken and describes how the owner may either contest the citation through an adjudication by mail or an in-person administrative hearing or pay the fine. Under the ordinance, regardless of who the driver was, it is the registered owner of the vehicle who is

liable. Chicago Municipal Code § 9-102-020 (added July 9, 2003).

¶ 3 An enabling act under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq*. (West 2006) was enacted effective May 22, 2006, which authorized red light camera programs in eight Illinois counties: Cook; DuPage; Kane; Lake; Madison; McHenry, St. Clair; and Will County. See 625 ILCS 5/11-208(f) (West 2006) (added by Pub. Act 94-795, eff. May 22, 2006); 625 ILCS 5/11-208.6(m) (West 2006).

¶ 4 Plaintiffs Paul Ketz, Randall Guinn, Cameron Malcolm, Jr., Charlie Peacock, and Jennifer DiGregorio are all registered vehicle owners who received red light violation citations from the City of Chicago. Plaintiff Shirley Peacock is Charlie Peacock's wife and was allegedly the driver of his vehicle for at least several of the six notices issued to Charlie Peacock and allegedly jointly paid the fines. The plaintiffs all paid the fines. Charlie Peacock first contested some of the notices of citation by mail. Jennifer DiGregorio contested the citation at an in-person hearing but was adjudicated liable. The amended complaint alleged that Plaintiff Elizabeth Keating "has received and unsuccessfully contested red light violation notices in other Illinois jurisdictions and reasonably expects and fears that she will receive one or more red light violation notices from the defendant City." Keating received a red light citation issued in Markham, Illinois and filed an administrative review action challenging her citation and that case was consolidated with the instant case and stayed pending resolution of this appeal. The remaining plaintiffs paid their fines. Plaintiffs then filed the instant action in circuit court.

¶ 5 Plaintiffs' amended complaint alleged that the City lacked home rule authority to enact the red light camera ordinance and for administrative adjudication of violations of the ordinance

and that the enabling act was unconstitutional because it was special or local legislation in violation of the Illinois Constitution. Plaintiffs sought a declaratory judgment that the ordinance was invalid, an injunction prohibiting the City from collecting fines under the program, and an order requiring the City to make restitution to plaintiffs and class members.

¶ 6 The City moved to dismiss the amended complaint in a combined motion pursuant to both section 2-615 and section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 5/2-619 (West 2010)), and after briefing and hearing the circuit court granted the City's motion. The court held that plaintiffs Elizabeth Keating and Shirley Peacock lacked standing because they did not receive citations from the City, and that the remaining plaintiffs did not have standing to assert that the City lacked home-rule power for the period of time from the enactment of the ordinance until the Illinois legislative enabling act because no plaintiff received a citation during that time. The court also rejected plaintiffs' claim that the enabling act violated the special or local law provision of the Illinois constitution because there was a rational basis for the legislature to enact the provision. The court further held that the voluntary payment doctrine barred plaintiffs' claims because they voluntarily paid the fines for the red light camera tickets. Plaintiffs appealed.

¶ 7 On appeal, plaintiffs argue that the circuit court erred in dismissing the action because: (1) the enabling act is unconstitutional local legislation; (2) the City's red light camera ordinance was void from its enactment and remained invalid after the passage of the Illinois red camera light program enabling legislation; (3) that the City's ordinance remained void after the enabling legislation specifically because the City never re-enacted its ordinance; and (4) alternatively, the

voluntary payment doctrine does not bar plaintiffs' action. The City argues that plaintiffs Keating and Shirley Peacock lack standing because they did not receive citations from the City, and that the remaining plaintiffs lack standing to challenge the ordinance's validity prior to the enactment of the Illinois enabling legislation. The City also argues that plaintiffs waived the argument that it had to re-enact the ordinance after the enabling act in order to be valid. We first address the threshold issue of standing, and then the remaining arguments advanced by plaintiffs on appeal.

¶ 8 ANALYSIS

¶ 9 I. Standing

¶ 10 We first address the City's argument that plaintiffs lack standing. Lack of standing is an affirmative defense in Illinois. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988). Standing may appropriately be raised by a motion for involuntary dismissal under section 2-619. *In re Custody of McCarthy*, 157 Ill. App. 3d 377, 380 (1987). Our review of a trial court's disposition of a section 2-619 motion is *de novo*. *Kedzie & 103rd Currency Exchange Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993).

¶ 11 The requirements for standing were stated by the Illinois Supreme Court held in *Greer*:

> "Standing in Illinois requires only some injury in fact to a legally cognizable interest. [Citation.] More precisely, the claimed injury, whether 'actual or threatened' [citation], must be: (1) 'distinct and palpable' [citation]; (2) 'fairly traceable' to the defendant's actions [citation]; and (3) substantially likely to be prevented or redressed by the grant of the requested relief [citations]." *Greer*, 122 Ill. 2d at 492-93.

¶ 12 A. Plaintiffs Elizabeth Keating and Shirley Peacock

¶ 13 "In the context of an action for declaratory relief, there must be an actual controversy between adverse parties, with the party requesting the declaration possessing some personal claim, status, or right which is capable of being affected by the grant of such relief. [Citation.]" *Greer*, 122 Ill. 2d at 492-93. The Illinois red light camera legislation specifically provided for ticketing the registered owner of a vehicle photographed by an automated red light camera, regardless of who was driving. See 625 ILCS 5/11–208.6(d) (West 2006).

¶ 14 Keating did not receive a red light camera citation from defendant City of Chicago. Her allegation in the amended complaint of speculative future harm in receiving a red light camera ticket from Chicago is insufficient to confer standing. As Keating did not receive any injury that is fairly traceable to the City's actions, there is no actual controversy sufficient to confer standing in this declaratory judgment action. Dismissal of Elizabeth Keating's claim based on lack of standing was appropriate and we affirm.

¶ 15 Shirley Peacock was not the registered owner of the vehicle cited and was not issued a citation, and therefore also did not receive any injury that is fairly traceable to the City's actions. While Shirley argues that there was indirect harm *vis a vis* the relationship with her husband, Charlie Peacock, who is the registered owner of the vehicle, because she split the cost of the fine with him, the fact remains that she herself was not cited under the ordinance. Shirley provides no authority for the proposition that the indirect harm she alleges can be the basis for a lawsuit based on the ordinance. We conclude she lacks standing to maintain this action on her own behalf. Therefore, dismissal of her claim due to lack of standing was also appropriate and we affirm.

¶ 16 B. The Remaining Plaintiffs Ketz, Guinn, Malcolm, Charlie Peacock, and DiGregorio

¶ 17 Paul Ketz, Randall Guinn, Cameron Malcom, Jr., Charlie Peacock, and Jennifer DiGregorio (remaining plaintiffs) all received red light camera citations from the City and thus have standing. Whether the remaining plaintiffs received their red light camera citations before or after the passage of the enabling act in 2006 does not impact their standing, because plaintiffs in their amended complaint did not only allege that the City's ordinance was invalid when enacted in 2003 prior to the 2006 enabling legislation; they also alleged that the ordinance remained invalid after the 2006 enabling act because the enabling act was unconstitutional.

¶ 18 The remaining plaintiffs argue that: (1) Chicago's red light ordinance was invalid from its inception in 2003 because the City lacked authority to enact the ordinance in the first place; (2) the City subsequently needed to re-enact the ordinance once authority was granted in the enabling act by the State; (3) the ordinance remained invalid after that passage of the legislature's enabling act; and (4) the circuit court erred in applying the voluntary payment doctrine to dismiss their lawsuit.

¶ 19 The City claims the remaining plaintiffs lack standing to argue that the ordinance was invalid when adopted in 2003 because the remaining plaintiffs all received citations after the passage of the enabling act in 2006. However, the remaining plaintiffs argue that the ordinance was not only invalid when adopted by the City in 2003 but that it remained invalid during the time they received citations, even after the passage of the enabling act in 2006, thus conferring standing.

¶ 20 The City also argues that the remaining plaintiffs waived the argument that the ordinance needed to be re-enacted after the passage of the Illinois enabling act because they did not raise

the specific argument that re-enactment of the ordinance was necessary after the enabling act. While plaintiffs did argue generally that the City did not have home rule authority to enact the ordinance prior to the enabling act, they also maintained below that the enabling act was unconstitutional, and thus did not raise any argument that the City should have re-enacted its ordinance after the enabling act. Thus, plaintiffs did waive this argument below. Where a party does not raise an argument in the trial court, the argument is forfeited on appeal. See *Robinson v. Toyota Motor Credit Corp*., 201 Ill. 2d 403, 413 (2002) (citing *Wagner v. City of Chicago*, 166 Ill. 2d 144, 147 (1995)). See also *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 539 (1996) (holding that defendants waived their preemption argument by failing to raise it in the trial court).

¶ 21 Therefore, we address the remaining arguments: (1) that the City's ordinance was and remained invalid from its adoption in 2003 because the City lacked home rule authority; (2) that the legislature's enabling act was unconstitutional special local legislation that lacked rational basis; and (3) that the circuit court erred in applying the voluntary payment doctrine as an additional basis to dismiss their suit.

¶ 22 II. Chicago's Ordinance is Valid

¶ 23 Our review of a combined motion to dismiss pursuant to both section 2-615 and section 2-619 of the Illinois Code of Civil Procedure is *de novo*. *Kean v. Wal-Mart Stores, Inc*., 235 Ill. 2d 351, 361 (2009). Additionally, the trial court's ruling that an ordinance was an appropriate exercise of home rule authority presents a question of law, which we review *de novo*. *People v. Whitney*, 188 Ill.2d 91, 98 (1999).

¶ 24 The ordinance at issue in this case is as follows:

"9-102-020 Automated traffic law enforcement system violation.

(a) The registered owner of record of a vehicle is liable for a violation of this section and the fine set forth in Section 9-100-020 when the vehicle is used in violation of Section 9-8-020(c) or Section 9-16-030(c) and a recorded image of the violation is recorded by an automated traffic law enforcement system." Chicago Municipal Code § 9-102-020 (added July 9, 2003).

¶ 25 Section 9-8-020 governs traffic signal controls and provides that traffic facing a steady red signal must stop at a clearly marked stop line or, if none, then before entering the intersection and must remain standing until an indication to proceed is shown. Chicago Municipal Code § 9-8-020(c) (added July 12, 1990). Section 9-16-030 governs turns on red signals. Chicago Municipal Code § 9-16-030 (added July 12, 1990).

¶ 26 Under the Illinois Constitution, a municipality with a population exceeding 25,000 is deemed a "home rule unit" and is granted authority to enact laws relating to the rights and duties of its citizens:

"[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(a).

¶ 27 This constitutional provision pertaining to powers of home rule units was intended to give home rule units the broadest powers possible to regulate matters of local concern. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 873 (2010) (citing *Scadron v. City*

of Des Plaines, 153 Ill. 2d 164, 174 (1992)). As the Illinois Supreme Court has recently explained, under the 1870 Illinois Constitution, the balance of power between our state and local governments was heavily weighted toward the state, but the 1970 Illinois Constitution drastically altered that balance, giving local governments more autonomy. *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18 (citing *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 286-87 (2001), *City of Evanston v. Create, Inc.*, 85 Ill. 2d 101, 107 (1981) (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3024)). Municipalities now enjoy "the broadest powers possible" under the Constitution. *Stubhub*, 2011 IL 111127 at ¶ 18 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174, 606 N.E.2d 1154, 180 Ill. Dec. 77 (1992)). In contrast, under "Dillon's Rule," "non-home-rule units possess only those powers specifically conveyed by the constitution or by statute; thus, such a unit may regulate in a field occupied by state legislation only when the constitution or a statute specifically conveys such authority." *Tri-Power Resources, Inc. v. City of Carlyle*, 2012 IL App (5th) 110075, ¶ 10 (quoting *Janis v. Graham*, 408 Ill. App. 3d 898, 902 (2011)).

¶ 28 The City of Chicago is a home rule unit. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 873 (2010). As such, our analysis is determined by the much broader scope of authority granted to the City of Chicago as a home rule authority.

¶ 29 "Under article VII, section 6, of the Illinois Constitution, home rule units of local government may enact regulations when the state has not specifically declared its exercise to be exclusive." *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 694 (2004) (citing Ill. Const. 1970 art. VII, § 6, *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (1994).

"In order to limit home rule power, a statute must contain express language as to the state's exclusive control; 'it is not enough that the State comprehensively regulates an area which otherwise would fall into home rule power.' " *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 517 (2000) (quoting *Village of Bolingbrook v. Citizens Utility Co.*, 158 Ill. 2d 133, 138 (1994)).

¶ 30 Concerning traffic ordinances specifically, "[p]rior to the adoption of the 1970 Illinois Constitution, units of municipal government were empowered to regulate motor vehicles in only those ways permitted by a specific act of the General Assembly." *Ruyle v. Reynolds*, 43 Ill. App. 3d 905, 907 (1976) (citing *Watson v. Chicago Transit Authority*, 12 Ill. App. 3d 684 (1973)). "Under the new constitution, however, home rule units are allowed to make any and all regulations not specifically prohibited by the General Assembly." *Ruyle*, 43 Ill. App. 3d at 907-08 (citing Ill. Const. 1970, art. VII, § 6, *Johnny Bruce Co. v. City of Champaign*, 24 Ill. App. 3d 900 (1974)).

¶ 31 The Illinois Vehicle Code (625 ILCS 5/1-100 *et seq*. (West 2004)) prohibits home rule units only from enacting provisions inconsistent with the Code, subject to the enumerated statutory sections. Section 11-208.2 of the Illinois Vehicle Code provides:

> "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, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act." 625 ILCS 5/11-208.2 (West 2004).

¶ 32 The legislature has not preempted the field of traffic regulation; rather, "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 (1999). Only section 11-208.2 limits the power of home rule authorities in this instance, and it limits home rule units to the extent any ordinance is inconsistent with Illinois traffic laws and regulations. This section, limiting the powers of home rule units, does not render void a city ordinance which is not inconsistent with the state's traffic laws or regulations. *Ruyle v. Reynolds*, 43 Ill. App. 3d 905, 908 (1976). "[S]ection 11--208.2 does not limit the powers of home rule units with respect to sections of the Vehicle Code outside chapter 11." *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 522 (2000) (holding that home rule towns did not exceed their powers by enacting ordinances allowing police to stop drivers solely for seat belt violations even though 625 ILCS 5/12-603.1 prohibits law enforcement officers from making such stops, because home rule towns were not expressly forbidden under the Illinois Vehicle Code from passing the ordinances, they were a valid exercise of the home rule power granted by Ill. Const., Art. VII, § 6(a)).

¶ 33 Section 11-207 of chapter 11 further provides in pertinent part:

> "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 ***." (Emphasis added.) 625 ILCS 5/11-207 (West 1998).

¶ 34 The Illinois Municipal Code provides that home rule authorities may not enact provisions that are traffic regulations governing the movement of vehicles. Section 1-2.1-2 of the Illinois Municipal Code authorizes systems of administrative adjudication of local code violations within the home rule authority of municipalities "except for offense[s] under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles." 65 ILCS 5/1-2.1-2 (West 2006). See, e.g., *Catom Trucking, Inc. v. City of Chicago*, 2011 IL App (1st) 101146, ¶ 18 (finding that section 1-2.1-2 stripped the city's department of administrative hearings of jurisdiction to adjudicate citations for operating overweight trucks on Chicago streets, as the citations were for moving violations).

¶ 35 Of the statutory sections excepted from the bar against home rule units enacting traffic regulations in section 11-208.2, only section 11-208 pertains to the regulation of traffic on streets, which provides the following:

> "Sec. 11-208. Powers of local authorities. (a) The provisions of this Code shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:
>
> * * *
>
> 2. Regulating traffic by means of police officers or traffic control signals." 625 ILCS 5/11-208 (West 2004).

¶ 36 Section 9-8-010 and section 9-8-020 of the Chicago Municipal Code specifically authorize the regulation of traffic-control devices which is allowed under the Illinois Vehicle Code. See Chicago Municipal Code §§ 9-8-010; 9-8-020 (added July 12, 1990)).

¶ 37 Prior to the 2006 enabling provision in section 11-208.6 for the red light camera automated system, there was no state legislation regarding the use of red light cameras, much less a specific prohibition against home rule authorities enacting such ordinances. Only with the enactment of the red light camera legislation was a limit placed on home rule authorities in connection with automated traffic law enforcement systems. Section 11-208(c) provided:

> "(c) Except as provided under Section 11-208.8 of this Code [625 ILCS 5/11-208.8], a county or municipality, including a home rule county or municipality, may not use an automated traffic law enforcement system to provide recorded images of a motor vehicle *for the purpose of recording its speed*. Except as provided under Section 11-208.8 of this Code, the regulation of the use of automated traffic law enforcement systems to record vehicle speeds is an exclusive power and function of the State. This subsection (c) is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. (1970) Art. VII, § 6]." (Emphasis added.) 625 ILCS 5/11-208.6(c) (West 2004).

¶ 38 In enacting the red light camera program the General Assembly made it clear that this new statutory scheme would not be subject to the prohibition in section 1-2.1.2 of the Municipal Code against the administrative adjudication of moving violations. *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, § 7. As this court recognized in *Fischetti*, the enactment itself specifies that: "A violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle." *Id*. (quoting Pub. Act 94-795 § 5

(eff. May 22, 2006); 625 ILCS 5/11-208.6(j) (West 2006)).

¶ 39 The remaining plaintiffs argue that the red light camera ordinance is in fact a regulation governing moving violations. However, the enabling legislation for automated traffic law enforcement systems such as the one used by Chicago explained the nature of the devices:

> "(a) As used in this Section, 'automated traffic law enforcement system' means 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 signal indication in violation of Section 11-306 of this Code [625 ILCS 5/11-306] or a similar provision of a local ordinance." 625 ILCS 5/11-208.6 (West 2006).

¶ 40 Although the red light cameras are triggered by the movement of vehicles through a red light, the camera is capturing a moment in time depicting the vehicle's use in disobeying a red light signal.

¶ 41 Thus, the City had home rule authority to enact traffic regulations that are not inconsistent with the Illinois Vehicle Code and do not regulate the movement of vehicles. The City had specific authority to adopt red light ordinances. Further, the red light camera ordinances enacted by home rule authorities have been interpreted as not in conflict with the Illinois Vehicle Code's proscription against home rule authorities enacting moving violations. Therefore, as such, we are bound to conclude that Chicago was within its home rule authority in enacting the red light camera ordinance in 2003, the ordinance was not void *ab initio* and did not need the enabling legislation in 2006, and the ordinance also remained valid through the dates when the remaining plaintiffs received their citations, as the 2006 enabling legislation made clear that such

ordinances were not in conflict with the Illinois Vehicle Code.

¶ 42 Plaintiff's citation to *Village of Park Forest v. Thomason*, 145 Ill. App. 3d 327 (1986), is distinguishable because the ordinance involved there was for a drunk driving violation, which was a regulation governing the movement of a vehicle subject to the uniformity provision under Chapter 11 of the Illinois Vehicle Code. *Village of Park Forest*, 145 Ill. App. 3d at 331. *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515 (1999), is also distinguishable because the municipal ordinances there expressly sought to regulate moving violations. *Village of Hanover Park*, 311 Ill. App. 3d at 527-28. The regulation in *Catom Trucking* penalized a failure to stop, again a moving violation.

¶ 43 Plaintiffs' further citation in reply to *Two Hundred Nine Lake Shore Drive Building Corp. v. Chicago*, 3 Ill. App. 3d 46 (1971), is also distinguishable, as that case involved a municipal ordinance enacted before the grant of home rule authority in the Illinois Constitution of 1970, under the prior 1870 Constitution whereby a city had only the authorities specifically granted by the legislature. *Two Hundred Nine Lake Shore Drive Building Corp*., 3 Ill. App. 3d at 50-51. Here, Chicago's ordinance was enacted well after the adoption of the 1970 Illinois Constitution at a time when the City unquestionably had home rule authority.

¶ 44 Plaintiffs also cite to *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18 (October 6, 2011), for the proposition that a home rule unit's attempt to exercise or perform a function not within the grant of the 1970 Constitution is void. *Stubhub* has since been modified upon denial of rehearing. See *City of Chicago v. Stubhub, Inc*., 2011 IL 111127 (November 26, 2012) (modified upon denial of rehearing). In its modified opinion, the supreme court held that the

City of Chicago's ordinance could not supplant the State's legislation regarding the collection of amusement taxes even under the city's constitutional home-rule authority, as "[t]he state has a greater interest than the City and a more traditional role in addressing the problem of tax collection by internet auctioneers." *Stubhub, Inc.*, 2011 IL 111127 at ¶ 36. The Illinois Supreme Court held that the rule in determining the extent of home rule power "limits [the court's] function under section 6(a) [Ill. Const. 1970, art. VII, § 6(a)] to a threshold one, in which we can declare a subject off-limits to local government control only where the state has a vital interest and a traditionally exclusive role." *Stubhub*, 2011 IL 111127 at ¶ 25. The Illinois Supreme Court further held that "[t]his test was used by a unanimous court as the definitive analysis under section 6(a) in *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 176 *** (1992), *Village of Bollingbrook v. Citizens Utilities Co. of Illinois*, 158 Ill. 2d 133, 139 *** (1994), and *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 290 *** (2001)," and as such was now "settled law." *Stubhub*, 2011 IL 111127 at ¶ 25. We note the dissent's view upon reconsideration pursuant to the City's petition for rehearing that the City was correct that the majority opinion has "radically redefined, and diminished, home-rule authority in Illinois." *Stubhub*, 2011 IL 111127 at ¶ 47 (Thomas, J., dissenting).

¶ 45 Unlike *Stubhub*, here section 11-207 of the Illinois Vehicle Code has long been consistently construed to allow local authorities to adopt traffic ordinances to the extent that they are not inconsistent with state law and do not attempt to regulate the movement of vehicles.

¶ 46 Thus, we conclude the circuit court correctly dismissed plaintiffs' amended complaint, as the red light camera ordinance was validly enacted pursuant to the City's home rule authority.

¶ 47 III. Constitutionality of the Enabling Illinois Legislation on Automated Traffic Law Enforcement Systems

¶ 48 Plaintiffs additionally argue that the City's red light camera ordinance remained invalid after the Illinois' enabling act because the State enabling legislation allowing red light camera programs in the counties specified is prohibited special local legislation and is arbitrary and does not pass the rational basis test. We determine this argument is not well-grounded, as the legislative history of the provision reveals that the reason for the enactment is not arbitrary and has a rational basis.

¶ 49 The bar against special local legislation in the Illinois Constitution of 1970 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.

¶ 50 "This constitutional provision does not prohibit all classifications; rather, its purpose is to prevent arbitrary legislative classifications." *In re Village of Vernon Hills*, 168 Ill. 2d 117, 122 (1995) (citing *Cutinello v. Whitley*, 161 Ill. 2d 409, 417 (1994); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 125 (1993)). "If any set of facts can be reasonably conceived that justify distinguishing the class to which the statute applies from the class to which the statute is inapplicable, then the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation or control, and may enact laws applicable only to those persons or objects." *In re Village of Vernon Hills*, 168 Ill. 2d at 122 (citing *Bilyk v. Chicago Transit Authority*, 125 Ill. 2d 230, 236 (1988); *People ex rel. County of Du Page v. Smith*, 21 Ill. 2d 572, 578 (1961)). "An act

is not an unconstitutional special or local law merely because of a legislative classification based upon population or territorial differences." *In re Village of Vernon Hills*, 168 Ill. 2d at 122 (citing *Smith*, 21 Ill. 2d at 578).

¶ 51 As the Illinois Supreme Court has explained, "[c]lassifications drawn by the General Assembly are always presumed to be constitutionally valid, and all doubts will be resolved in favor of upholding them." *In re Village of Vernon Hills*, 168 Ill. 2d at 122-23 (Citing *Bilyk*, 125 Ill. 2d at 235.) "The party who attacks the validity of a classification bears the burden of establishing its arbitrariness." *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *People v. Palkes*, 52 Ill. 2d 472, 477 (1972)).

¶ 52 Further, a claim that an enactment is special legislation is " ' "generally judged by the same standard" ' " that applies to review of an equal protection challenge. *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (quoting *Nevitt*, 157 Ill. 2d at 125, quoting *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 368 (1985)). Where an enactment does not affect a fundamental right or involve a suspect or quasi-suspect classification, the appropriate standard for review is the rational basis test. *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *Cutinello*, 161 Ill. 2d at 417; *Nevitt*, 157 Ill. 2d at 125). "Under this standard, a court must determine whether the statutory classification is rationally related to a legitimate State interest." *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *Cutinello*, 161 Ill. 2d at 417; *Nevitt*, 157 Ill. 2d at 125-26; *Bilyk*, 125 Ill. 2d at 236; *Christen v. County of Winnebago*, 34 Ill. 2d 617, 619 (1966)).

¶ 53 The Illinois Supreme Court has further defined the rational basis test, holding that a

classification based upon population or territorial differences will survive a special legislation challenge only: "(1) where founded upon a rational difference of situation or condition existing in the persons or objects upon which the classification rests, and (2) where there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished." *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *In re Belmont Fire Protection District*, 111 Ill. 2d 373, 380 (1986); *Chicago National League Ball Club, Inc.*, 108 Ill. 2d at 369; Bridgewater v. Hotz, 51 Ill. 2d 103, 112 (1972); *Smith*, 21 Ill. 2d at 578; Du Bois v. Gibbons, 2 Ill. 2d 392, 399 (1954)). This test has become known as the " 'two-prong test.' " *In re Village of Vernon Hills*, 168 Ill. 2d at 123 (citing *In re Belmont Fire Protection District*, 111 Ill. 2d at 380).

¶ 54 An examination of the enactment of the red light camera program reveals that it passes the rational basis test and the two-prong test, in that the inclusion of the specific counties is not arbitrary but, rather, is rationally related to a legitimate State interest and is founded upon both a rational difference of situation or condition and there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished.

¶ 55 The red light camera enabling legislation at issue was enacted in section 11-208 of the Illinois Vehicle Code on May 22, 2006, and provides as follows:

> "(f) A municipality or county designated in Section 11-208.6 [625 ILCS 5/11-208.6] 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 or lessee of a vehicle used in such a violation." 625 ILCS 5/11-208(f) (West 2006) (added by Pub. Act 94-795, eff. May 22, 2006).

¶ 56 Section 11-208.6(m) further provides: "This Section applies only to the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and to municipalities located within those counties." 625 ILCS 5/11-208.6(m) (West 2006).

¶ 57 In construing a statute, the primary objective is to give effect to the intention of the legislature, and we must "first examine the words of the statute as the language of the statute is the best indication of legislative intent." *People v. Collins*, 214 Ill. 2d 206, 214 (2005). "Where the language is plain and unambiguous we must apply the statute without resort to further aids of statutory construction." (Citations omitted). *Collins*, 214 Ill. 2d at 214. "Where statutory language is ambiguous, however, we may consider other extrinsic aids for construction, such as legislative history and transcripts of legislative debates, to resolve the ambiguity." *Id*. (citing *People v. Whitney*, 188 Ill.2d 91, 97–98 (1999)).

¶ 58 The relevant provisions of the enactment above do not indicate the reason for the inclusion of only those specific counties. Thus, we look to the transcript in the legislature of the discussion of the enactment as a constructive aid . The relevant discussion of why the legislation included particular counties is precisely on point and demonstrates the reason for the legislature's classification. Upon the third reading of the bill in the Senate, the following discussion occurred:

> "SENATOR RIGHTER:
>
> Thank you. Senator Cullerton, first, why these select counties? I think you've added seven, for a total of what would be eight now in the State. Why – why did you pick these particular counties?
>
> PRESIDENT JONES:

Senator Cullerton.

SENATOR CULLERTON:

Well, the way this works is it – *it would only be used and utilized in areas where they have a lot of traffic* because the cameras themselves cost something like ninety to a hundred thousand dollars. So, at 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* – populated counties." (Emphasis added.) 94th Ill. Gen. Assem., Senate Proceedings, March 29, 2006, at 22.

¶ 59 The discussion of the intent in including only the counties named in the enactment clarifies that the legislature intended only the more populous counties that have a lot of traffic would utilize the red light camera program. The classification is rationally based on differences in population and traffic in the State's counties. We determine the enactment is not an impermissible special local legislation prohibited by the Illinois Constitution, and therefore affirm the circuit court's dismissal of this constitutional claim.

¶ 60 IV. Voluntary Payment Doctrine

¶ 61 Plaintiffs also argue it was error to dismiss their suit based on the voluntary payment doctrine. Our supreme court reiterated the old common law voluntary payment doctrine in *Illinois Glass Co. v. Chicago Telephone Co.*, 234 Ill. 535 (1908):

"It has been a universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal. It has been

deemed necessary not only to show that the claim asserted was unlawful, but also that the payment was not voluntary; that there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion." *Illinois Glass Co.*, 234 Ill. at 541.

¶ 62 This court has previously noted that apparently the voluntary payment doctrine has been applied to any cause of action which seeks to recover a payment made under a claim of right, whether that claim is premised on contract, fraudulent misrepresentation, a statutory tax or penalty, among others. See *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 855, fn. 8 (1995) (recognizing the wide variety of causes of action applying the doctrine and cases cited therein). Under the voluntary payment doctrine, "money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal." *Smith v. Prime Cable*, 276 Ill. App. 3d 843, 847 (1995). A payment is involuntary if (1) the payor lacked knowledge of the facts upon which to protest the payment at the time of payment, or (2) the payor paid under duress. *Getto v. City of Chicago*, 86 Ill. 2d 39, 48-49 (1981). The voluntary payment doctrine does not apply when payment is "made under duress or compulsion." *Getto*, 86 Ill. 2d at 51. "The issue of duress and compulsory payment generally is one of fact *** to be judged in light of all the circumstances surrounding a given transaction," but "where the facts are not in dispute and only one valid inference concerning the existence of duress can be drawn from the facts, the issue can be decided as a matter of law including on a motion to dismiss." (Citations omitted.) *Smith*, 276 Ill. App. 3d at 850.

¶ 63 In the seminal case of *Illinois Glass Co.*, the plaintiff telephone customer brought an action against the telephone company to recover amounts paid for telephone service in excess of legal rates. However, our supreme court recognized even then that "[t]he ancient doctrine of duress of person, and later of goods, has been much relaxed, and extended so as to admit of compulsion of business and circumstances ***." *Illinois Glass Co.*, 234 Ill. at 541. Thus, the court observed that "perhaps a telephone corporation having a system in general operation and connected with customers and other business houses might reasonably influence a business house to make an unwilling payment of an amount illegally demanded, which would make the payment compulsory. The telephone has become an instrument of such necessity in business houses that a denial of its advantages would amount to a destruction of the business." *Illinois Glass Co.*, 234 Ill. at 541. The court nevertheless affirmed dismissal of the lawsuit. The Illinois Supreme Court held that although the telephone company illegally charged a higher rate, "a larger sum was voluntarily paid without fraud, mistake of fact or other ground for annulling the contract," and affirmed the appellate court's decision affirming dismissal of the telephone customer's suit. *Illinois Glass Co.*, 234 Ill. at 546.

¶ 64 However, many years later in *Getto*, 86 Ill. 2d 39, the Illinois Supreme Court revisited the issue and came to the opposite conclusion. In *Getto*, the plaintiff consumer brought a class action against the telephone company and defendant City of Chicago to recover an illegal message tax imposed by the City and collected by the telephone company. The case was before the Illinois Supreme Court on a second interlocutory appeal by the defendant telephone company. The Illinois Supreme Court first recognized the payment under protest is the typical means of

objecting to taxes, the absence of such protest would not automatically require application of the voluntary payment doctrine. *Getto*, 86 Ill. 2d at 49. The court held that "[i]t must also be shown that the taxpayer plaintiff had knowledge of the facts upon which to frame a protest and also that the payments were not made under duress or compulsion." *Getto*, 86 Ill. 2d at 49. The court first found that the plaintiffs did not have sufficient facts to form a protest because the phone bills did not delineate which municipal "City" tax was involved, what portion of the bill was being taxed, or the fact that the charge included a 3% charge for costs of accounting. *Getto*, 86 Ill. 2d at 50. The court also went on to find that even if the plaintiff had sufficient knowledge of the facts, "the implicit and real threat that phone service would be shut off for nonpayment of charges amounted to compulsion that would forbid application of the voluntary-payment doctrine." *Getto*, 86 Ill. 2d at 51. The court rejected the defendants' argument that the plaintiff had to exhaust the administrative remedy provided for in a general order of the Illinois Commerce Commission because the alleged unlawful tax was "sanctioned and approved by the Commission itself." *Getto*, 86 Ill. 2d at 53. Thus, the court held that it was not necessary to exhaust this administrative remedy as "[a]ny attempt by the plaintiff to follow the procedural requirements in [the general order of the Commission] would obviously have been pointless and he would have been exposed to possible termination of service. We judge that the plaintiff is not barred under the voluntary-payment doctrine." *Id.* We note that *Illinois Glass Co.*, where the voluntary payment doctrine was applied, involved a contract with a telephone company, while *Getto* involved utility rates and charges established by the Illinois Commerce Commission and the City of Chicago (*Getto*, 86 Ill. 2d at 50).

¶ 65 The doctrine has been applied through the years with inconsistent and sometimes harsh results. Some courts have carved out a further special category of duress where allegedly unlawful taxes or fees were recoverable for either services or personal items deemed necessities. See *Getto*, 86 Ill.2d at 51 (payment made under duress when paid to avoid loss of telephone service); *Ross v. City of Geneva*, 71 Ill.2d 27, 33-34 (1978) (payment made under duress where public utility threatened to terminate electricity); *Geary v. Dominick's Finer Foods*, 129 Ill. 2d 389, 398 (1989) (payment of a sales tax was made under duress where the products being purchased, tampons and sanitary napkins, were necessities). However, this line of case law has resulted in some harsh results for consumers who felt compelled to pay disputed charges but courts did not find that they were under sufficient duress because the service was not a necessity. See *Dreyfus v. Ameritech Mobile Communications*, 298 Ill. App. 3d 933, 940 (1998) (cellular telephone service not a necessity); *Smith*, 276 Ill. App. 3d at 855.

¶ 66 We note that showing that a product or service is a necessity is not a requirement to establish duress under the voluntary payment doctrine; it is only one way to show duress. This court has recognized that the nature of sufficient duress has broadened and that recovery of a voluntary payment made under a claim of right can occur " 'where a person, to prevent injury to himself, his business or property, is compelled to make payment of money which the party demanding has no right to receive and no adequate opportunity is afforded the payor to effectively resist such demand.' " *Smith*, 276 Ill. App. 3d at 849 (quoting *Schlossberg v. E.L. Trendel & Associates, Inc.*, 63 Ill. App. 3d 939, 942 (1978)).

¶ 67 The modern trend has been against a harsh application of the ancient common law

voluntary payment doctrine. In *Raintree Homes, Inc. v. Vill. of Long Grove*, 389 Ill. App. 3d 836 (2009), the trial court found in favor of a plaintiff developer in the developer's declaratory judgment action wherein a village ordinance requiring the payment of impact fees as a condition of obtaining building permits was found unenforceable. The *Raintree* appellate court concluded that the trial court did not err in finding that the developer was not barred from recovering by the voluntary payment doctrine because the developer paid the fees under duress. The court was persuaded by the developer's testimony if he had been unable to obtain the building permits, his company would have gone out of business and breached its contracts with its customers. *Raintree Homes, Inc.*, 389 Ill. App. 3d at 864. Raintree could not have obtained any building permits without paying the associated impact fees. The court held that duress was established because "[w]ithout building permits, [Raintree] could not have legally built homes in the Village." *Raintree Homes, Inc*., 389 Ill. App. 3d at 865. Further, the court held that the fact that Raintree apparently profited did not change the court's conclusion and missed the point that it paid the fees under duress. *Id.*

¶ 68 In a case involving facts more similar to the present case before us, *Norton v. City of Chicago*, 293 Ill. App. 3d 620 (1997), the plaintiffs challenged a $3 delinquent penalty fee on parking fines and brought suit against the City of Chicago, a collection agency, and Cook County. We reversed the summary judgment granted in favor of the county and held that the action was not barred by the voluntary payment doctrine because the demand notices from the City were coercive enough to render the plaintiffs' payment involuntary. The demand notices sent to plaintiffs threatened "further legal action," a "default judgment in the amount of $35 plus

court costs," to "take action to recover payment in a larger amount," or to "demand the maximum fine allowed by law." *Norton*, 293 Ill. App. 3d at 627. Further, the mailing directed the plaintiffs not to contact the traffic court and that, "No information will be given or payment accepted at Traffic Court." *Id.*

¶ 69 Similarly here, although the notices of citation from the City stated that one could either pay or contest the fine, here the City's ordinances had similar coercive language and effect as the notices in *Norton*. The Chicago Municipal Code provisions provided that unless a stay was obtained in court, even if administrative remedies were exhausted, if payment was not made within 21 days a determination of liability would be entered, collection actions could be taken, and plaintiffs would then be liable for attorney fees and costs, and could also have their vehicles immobilized. In relevant part, section 9-100-120 of the City's red light camera ordinance provided the following:

> "(a) If any fine or penalty is owing and unpaid after a determination of liability under this chapter has become final and the respondent *has exhausted or failed to exhaust* judicial procedures for review, the Department of Revenue shall cause a notice of final determination of liability to be sent to the respondent in accordance with Section 9-100-050(f).
>
> (b) Any fine and penalty, if applicable, remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the city which may be enforced in the manner set forth in Section 2-14-103 of this Code. Failure of the respondent to pay such fine or penalty within 21 days of the date of the notice *may result*

in the immobilization of the person's vehicle pursuant to the procedures described in Section 9-100-120." (Emphasis added.) Chicago Municipal Code § 9-102-060 (added July 9, 2003).

¶ 70 Section 2-14-103 provides for the following enforcement:

(a) Any fine, other sanction or costs imposed by an administrative law officer's order that remain unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures shall be a debt due and owing the city and, as such, *may be collected in accordance with applicable law*.

(b) *After the expiration of the period in which judicial review may be sought, unless stayed by a court of competent jurisdiction*, the findings, decision and order of an administrative law officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(c) In any case in which a respondent fails to comply with an administrative law officer's order to correct a code violation or imposing a fine or other sanction as a result of a code violation, *any expenses incurred by the city to enforce the administrative law officer's order, including but not limited to, attorney's fees, court costs and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or an administrative law officer shall be a debt due and owing the city*. Prior to any expenses being fixed by an administrative law officer, the respondent shall be provided with notice that states that the respondent shall appear at a hearing before an administrative law officer to determine whether the respondent has failed to comply with

the administrative law officer's order. The notice shall set the time for the hearing, which shall not be less than seven days from the date that notice is served. Notice shall be served by first class mail and the seven-day period shall begin to run on the date that the notice was deposited in the mail.

(d) Upon being recorded in the manner required by Article XII of the Code of Civil Procedure or by the Uniform Commercial Code, *a lien shall be imposed on the real estate or personal estate, or both*, of the respondent in the amount of a debt due and owing the city. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction." (Emphasis added) Chicago Municipal Code, § 2-14-103 (added April 29, 1998).

¶ 71 Thus, unless plaintiffs were to obtain a stay in a court of competent jurisdiction prior to the expiration of the period for judicial review, the fine becomes a judgment owed to the City, even if plaintiffs pursued the exhaustion of administrative remedies, the City could impose a lien on plaintiffs' property and pursue all avenues for collection, and plaintiffs would be liable for attorney fees and costs. Meanwhile, the City provided cited registered vehicle owners only 21 days to pay.

¶ 72 Further, section 9-100-120 in relevant part provides:

"(b) When the registered owner of a vehicle has accumulated three or more final determinations of parking violation or compliance liability, including a final determination of liability for a violation of Section 9-102-020, in any combination, for which the fines and penalties, if applicable, have not been paid in full, the city traffic

compliance administrator shall cause a notice of impending vehicle immobilization to be sent, in accordance with Section 9-100-050(f). *** Failure to pay the fines and penalties owed within 21 days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in person to submit evidence which would conclusively disprove liability within 21 days of the date of the notice. Documentary evidence which would conclusively disprove liability shall be based on the following grounds:

(1) that all fines and penalties for the violations cited in the notice have been paid in full; or

(2) that the registered owner has not accumulated three or more final determinations of parking or compliance violations liability which were unpaid at the time the notice of impending vehicle immobilization was issued; or

(3) in the case of a violation of Section 9-102-020, that the registered owner has not been issued a final determination of liability under Section 9-102-060. Chicago Municipal Code, § 9-100-120 (amended July 9, 2003).

Chicago Municipal Code § 9-102-120(b) (amended July 9, 2003).

¶ 73 The City argues that there was no duress because "plaintiffs could have challenged their red light camera tickets without incurring adverse consequences until after the proceedings were resolved." However, the above provisions establish that even if plaintiffs had exhausted their

administrative remedy, unless they obtained a stay in court, a notice of final determination would still issue, with the resulting judgment, potential liability for the City's costs and attorney fees, and possible immobilization of their vehicles. Chicago Municipal Code § 9-102-060 (added July 9, 2003).

¶ 74 Finally, the only administrative review provided for was to challenge liability, not to challenge the legality of the ordinance itself, which is what plaintiffs have done in this case. Chicago Municipal Code § 9-102-120(b) (amended July 9, 2003).

¶ 75 A review of precedent reveals that payments to the City of Chicago have been found to be voluntary where there is no immediate threat to the payor's property or threat of imposition of penalties. See, e.g., *Elston v. City of Chicago*, 40 Ill. 514 (1866) (payment of void assessment voluntary where only threat of levy and no immediate ability to take possession of payor's goods); *Arms v. City of Chicago*, 251 Ill. App. 532 (1929) (payment was voluntary where there was no evidence of threats by the City to impose penalties for failure to obtain electrical licenses). Here, there was both a threat to the plaintiffs' property (in the form of a judgment lien) and a threat of penalties.

¶ 76 The City relies on a case from 1968, *Berg v. City of Chicago*, 97 Ill. App. 2d 410 (1968), for the proposition that payment was voluntary and plaintiffs were not under duress because they had the option to pay the fine or to appeal and did not appeal. *Berg* held that because no appeals were taken from the judgments for the traffic fines in municipal court, "the fines were paid under a mistake of law and not under duress." *Berg*, 97 Ill. App. 2d at 425. The validity of *Berg* is questionable, as it is well established that "a party who challenges the validity of a statute on its

face is not required to exhaust administrative remedies." *Illinois Health Maintenance Organization Guaranty Ass'n v. Shapo*, 357 Ill. App. 3d 122, 137 (2005). " 'The reason for this exception is apparent: administrative review is confined to the proofs offered and the record created before the agency' " and "[a] facial attack to the constitutionality of a statute, which presents purely legal questions, is not dependent for its assertion or its resolution on the administrative record." *Shapo*, 357 Ill. App. 3d at 137 (quoting *Arvia v. Madigan*, 209 Ill.2d 520, 532-33 (2004)). Administrative exhaustion is also not required where the enabling legislation is challenged. See *Sedlock v. Board of Trustees of Police Pension Fund of City of Ottawa*, 367 Ill. App. 3d 526, 528 (2006) ("Where an administrative assertion of authority to hear or determine certain matters is challenged on its face as not authorized by the enabling legislation, such a facial attack does not implicate the exhaustion doctrine and exhaustion is not required."). Plaintiffs are correct that no Illinois Court has since relied on *Berg*, other than the circuit court below for the proposition cited by the City.

¶ 77 The City concedes that plaintiffs may bring a declaratory judgment action to challenge the validity of a law without exhausting administrative remedies, but then argues that the voluntary payment doctrine provides a valid defense, an argument which we reject in this case.

¶ 78 To hold that payment of fines for citations under the City red light ordinance was "voluntary" is to ignore the practical reality of duress to pay such citations issued by the City under the City's ordinances. If the threat of having phone service shut off established duress in *Getto*, and the threat of lost business for a real estate developer was sufficient to establish duress in *Raintree*, one would be hard–pressed to claim that a judgment, exposure to fees and costs, and

potential immobilization of one's vehicle does not establish duress. As plaintiffs correctly contend, dismissal on the basis of the voluntary payment doctrine was improper. However, because we have concluded that dismissal was proper for failure to state a cause of action because the ordinance is valid and the enabling act is constitutional, we affirm the judgment dismissing the complaint.

¶ 79 CONCLUSION

¶ 80 We determine the circuit court did not err in dismissing plaintiffs' complaint. Dismissal as to the claims brought by plaintiffs Elizabeth Keating and Shirley Peacock based on lack standing was proper because they were not issued citations from the City.

¶ 81 As to the remaining plaintiffs, Paul Ketz, Randall Guinn, Cameron Malcom, Jr., Charlie Peacock, and Jennifer DiGregorio, while dismissal on the basis of the voluntary payment doctrine was error, we determine dismissal was appropriate because the remaining plaintiffs have failed to state a cause of action. Chicago's red light camera ordinance was not void, as Chicago had home rule authority and the ordinance was not in conflict with the Illinois Vehicle Code's proscription against the enactment of ordinances regulating moving violations. Further, as Chicago had home rule authority to enact the ordinance and did not need an enabling act, the ordinance was not void either prior to or subsequent to the enabling act.

¶ 82 Affirmed.