

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**LAWRENCE H. GRESS, on behalf of himself and
others similarly situated,**)

Plaintiff,)

vs.)

**SAFESPEED, LLC, an Illinois limited liability company;
NIKKI ZOLLAR; CHRIS LAI; KHALID (“CLIFF”)
MAANI; OMAR MANNI; TONY RAGUCCI;
MARTIN A. SANDOVAL; CITY OF OAKBROOK;
PATRICK DOHERTY; BILL HELM; JEFF TOBOLSKI;
ROBERT GEDVILLE; JOHN O’SULLIVAN; SERGIO
RODRIGUEZ; JOHN RYAN; MICHAEL CARBERRY;
JOHN KOSMOWSKI; and BILL MUNDY**)

Defendants.)

**CASE NO. 1:20-CV-00756
Honorable Judge Dow**

**MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS THE COMPLAINT
BY TONY RAGUCCI**

Introduction

Plaintiff is the class representative, see p. 18 of the complaint. Allegedly Plaintiff received a ticket for a violation of 5/11-306 (c) of the Illinois Vehicle Code that “demanded” a payment of \$100. Section 5/11-306 (c) of the Vehicle Code is the section that delineates violations for enforcement of the red light.

The complaint which contains 236 paragraphs does not indicate, in any way, how or if the Plaintiff resolved the red light violation. As a result the Plaintiff has not incurred a concrete injury in fact and has no standing to act as Plaintiff either for himself or as a member of the class.

Argument

The Supreme Court has required that any Plaintiff seeking an Article III federal forum to demonstrate standing by satisfying three criteria: 1) a concrete injury in fact. 2) that is fairly traceable to the Defendant's conduct and 3) that can be redressed by a favorable decision; University of Pennsylvania Law Review Volume 162:1373 citing Marbury v. Madison. A Plaintiff must establish Article III standing to satisfy the case or controversy requirement. The Supreme Court in Lujan v. Defender of Wildlife, 504 US 555 has defined an "injury in fact" as an injury of a legally protected interest which is concrete and actual. This Plaintiff was sent a violation notice for running a red light in violation of the Illinois Vehicle Code. Upon information and belief the Plaintiff did nothing to address the violation notice, didn't pay the fine or seek administrative review.

It is incumbent on the Plaintiff to show that he suffered an invasion of a legally protected right; Spokeo v. Robins, 136 S. Ct. 1540 (2016). It goes without saying that running a red light is not a legally protected interest. Further, a Plaintiff cannot manufacture standing by choosing to make expenditures based on hypothetical future behavior Clapper v. Amnesty International, 135 S. Ct. 1138, and the Plaintiff would have no future problems should he not violate the red light.

The Defendant recognizes that this Court is not bound by any decision made by a State court but the Defendant asks that this Court consider a ruling made by the Supreme Court of Texas in Garcia v. City of Willis, etc. 17-0713. In that case the Plaintiff received a ticket based on a red light violation and petitioned to be the named Plaintiff on behalf of the class of other petitioners who also received red light violations.

Garcia, like Gress (Plaintiff in this case) had administrative remedies available to him rather than simply paying the fine for the violation. Garcia, like Gress did not avail himself of any of the administrative remedies available to him in order to contest the violation. As a result he did not avail himself of all the remedies available to him. Neither did Gress in this case. The Supreme Court of Texas ruled that Garcia did not have standing to sue in court because he had not exhausted his administrative remedies before. The same logic should apply to Gress. There is no evidence that Gress paid the fine for the violation. Therefore, he has not lost any monies. Gress did not seek any administrative review or relief of/from the violation. With all due respect, this Defendant respectfully requests that this Court consider the reasoning of the Texas court and make a similar ruling.

Finally, the Defendant was the mayor of another Defendant, City of Oakbrook Terrace, during some of the relevant time outlined in the complaint. City of Oakbrook Terrace has filed a Motion to Dismiss that includes arguments relevant to the issue of Gress' standing. Those arguments appear on pages 5-12 of its Motion to Dismiss. To that extent, that Motion raises the same issue regarding standing. This Defendant adopts the arguments presented by the City of Oakbrook Terrace in its Motion to Dismiss.

Specifically, the Court should consider the following matters raised by the City of Oakbrook Terrace in its brief. On page 5 the City cites Idry v. City of Chicago and argues that because Gress did not exhaust or even seek administrative review he is precluded from doing so now. This argument is pressed again on page 6 when the City cites the Armstrong case and states "Gress could have litigated all of his claims derived from the red light citation but chose not to contest the citation."

Further, on page 12 the City points again to the Idry case and states; “It is well-settled law in Illinois that red light cameras are a legal use of a municipality’s police power, holding that no one has a fundamental right to run a red light or avoid being seen by a camera on a public street”.

Wherefore, the Defendant respectfully requests that this Honorable Court rule that Gress has no standing to sue or represent the class in this case.

Respectfully submitted,

/s/ Steven C. Rueckert
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