IN THE SUPREME COURT OF IOWA

No. 16-0435

CITY OF CEDAR RAPIDS,

Plaintiff-Appellee,

v.

MARLA MARIE LEAF,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF LINN COUNTY
NO. CRCISC214393
HON. PATRICK R. GRADY, JUDGE

PROOF BRIEF OF DEFENDANT-APPELLANT (AMENDED)

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ROUTING STATEMENT

Defendant-Appellant ("Ms. Leaf" or "Marla Leaf") asserts that this case should be retained by the Iowa Supreme Court based on the "substantial constitutional questions" presented as to the validity of so-called automated traffic enforcement ("ATE") provisions of Cedar Rapids Municipal Code section 61.138 ("Ordinance") implemented by Plaintiff-Appellee Cedar Rapids ("City"). Iowa R. App. P. 6.1101(2)(a). In addition, Ms. Leaf raises issues and presents arguments of first impression concerning municipal ATE ordinance enforcement on interstate highways located within a City's jurisdictional limits, thereby affecting the rights and interests of thousands of unfamiliar vehicle owners, as well as the limitations of powers of that city. Iowa R. App. P. 6.1101(2)(c). The public importance of considering these issues weighs in favor of retention pursuant to Iowa Rules of Appellate Procedure 6.1101(2)(d).

STATEMENT OF THE CASE

This case raises fundamental questions about: a municipality's ability to impose fines upon members of the traveling public on a segment of federal interstate highway, under an ATE Ordinance, over the objection of the state agency with jurisdiction over that roadway; the limitations of a local government's ability to delegate its core police functions, involving discretionary decisions resulting in the imposition of millions of dollars of civil

penalties, to Gatso, USA, Inc., ("Gatso"), a private for-profit corporation with a contingent fee interest in collecting such penalties; and the minimum protections of the Iowa Constitution afforded to the traveling public, involving due process, equal protection, and privileges and immunities. Ms. Leaf, who has been prosecuted under the City's Ordinance, has suffered the adverse results of these violations, both procedurally and substantively—results that, by this appeal, she prays this Court will reverse.

Ms. Leaf's case, standing alone, may seem insignificant to some: it constitutes one $75.00 penalty that she believes should not have been imposed, with court costs now to $195.00. But, the injustice experienced by her is not trivial, when viewed in a larger context. At the very location where the City alleges she violated its Ordinance—I-380 Southbound J Avenue Exit-—tens of thousands of people, each year, suffered a similar fate and were issued Violation citations: 44,775 in 2011; 38,052 in 2012 and 44,529 in 2013. (App. 00113).

The contested Ordinance was passed in 2009 and involved, in part, placing fixed radar and camera equipment at four locations on interstate highway I-380, affixed to trusses owned by the Iowa Department of Transportation ("IDOT"). In the latter months of 2013, and in the beginning of 2014, the IDOT issued a series of administrative rules applicable to ATE laws on primary and interstate highways in Iowa. It subsequently evaluated,

found lawfully-deficient, and ruled that ATE equipment at the interstate locations—including on I-380 Southbound at J Avenue—must be removed by the city.

Ms. Leaf was issued a Notice of Violation by Gatso, under the City's logo, because she owned a vehicle that allegedly had been operated in violation of the Ordinance at that location, on February 5, 2015. (App. 00021). Ms. Leaf believed that the allegation was false and immediately contested it. (App. 00016-00017, App. 00025-00026). A Gatso employee directed her to attend an administrative hearing, on March 4, 2015, at 7:00 p.m. (App. 00025-00026). Despite her objection due to a scheduling conflict, a brief hearing was held and she was informed by the Hearing Officer that she was "guilty" and would "need to pay the fine." (App. 00018-00019). The Hearing Officer's Order indicated that the decision had been made upon a "preponderance of the evidence." (App. 00124-00125).

Ms. Leaf contested the decision, and, in response to her filing a required form, the City, as Plaintiff, filed a lawsuit against Ms. Leaf, as Defendant, on March 31, 2015, in the Iowa District Court for Linn County. (App. 00001-00002). Ms. Leaf filed an Answer on April 8, 2015. (Appearance and Answer of Defendant Marla Marie Leaf). An Affidavit of Service of the Municipal Infraction was filed on April 14, 2015, with a cost of $35.00. (Affidavit of Service).

Magistrate Judge Marty Hagge convened the trial on May 26, 2015. Ms. Leaf's Motion to Dismiss (App. 00006-00013), was denied. (App. 00146). Upon the conclusion of the City's evidence, Ms. Leaf moved the Court to direct a verdict in her favor. (App. 00081). That motion, too, was denied. On August 4, 2015, Magistrate Hagge entered an Order finding Ms. Leaf liable for violating the City's Ordinance. (App. 00146-00149).

To that Order, and, pursuant to Iowa Code sections 364.22(6)(a) and 631.13, Ms. Leaf filed a Notice of Appeal to the Iowa District Court on August 11, 2015. (Notice of Appeal, August 11, 2015). The parties submitted the appeal on briefs (Ms. Leaf on December 8, 2015; the City on December 29, 2015). Ms. Leaf also filed a Motion to Submit Additional Exhibit, which included the "Bad Debt" reference on Ms. Leaf's online record maintained by Gatso. (App. 00150-00153). On January 6, 2016, Ms. Leaf's Motion was denied. Ms. Leaf filed a Reply Brief on January 11, 2016.

On February 9, 2016, the Iowa District Court for Linn County, sitting in its appellate capacity, the Honorable Patrick J. Grady, presiding, ruled that the City had proven by clear, convincing and satisfactory evidence that Ms. Leaf had violated the City's ATE Ordinance. (App. 00157). The district court further held that the City had properly exercised power under its home rule authority in passing the Ordinance and, therefore, the Ordinance had not unconstitutionally granted jurisdiction to the Administrative Board. (App.

00158-00159). The district court held that the Ordinance was not unconstitutional based on the due process, equal protection, and privileges and immunities challenges that Ms. Leaf had advanced. (App. 00158-00163). Finally, the district court held that the City had not unlawfully delegated its police power to Gatso. (App. 00163).

Defendant-Appellant Marla Leaf filed an Application for Discretionary Review on March 8, 2016, which was granted on April 1, 2016. This appeal follows. (App. 00166-00178).

STATEMENT OF FACTS

Ms. Leaf is 65 years old. (App. 00024). A resident of the City, she is the registered owner of a 2012 Ford Mustang, license plate number 190 WQR. (App. 00017, App. 00039). Ms. Leaf has driven for more than 50 years. (App. 00024). Prior to February 5, 2015, she had never before received a moving traffic violation. (App. 00024).

The City, in Linn County, is an Iowa municipal corporation. In 2009, its City Council promulgated section 61.138 in the Municipal Code of Ordinances pursuant to its police powers. Under it, the City assesses civil penalties against vehicle owners whose vehicles are alleged to have violated the Ordinance's red

light and speed provisions.[1] A segment of interstate highway I-380 runs through the City. To implement the Ordinance thereon, the City and Gatso have permanently fixed camera-radar equipment on overhanging trusses owned by the IDOT at four locations (two for northbound traffic; two for southbound traffic) in a manner that only captures images of rear license plates, omitting the prosecution of millions of semi-trucks that travel through Cedar Rapids. (App. 00009-00010; App. 00111). That is because rear license plate numbers, normally affixed to trailers being hauled, are not included in the so-called NLETs database, which is the sole source of information utilized by Gatso and the City to identify motor vehicle owners. (App. 00010). The same database omits the license plate numbers of certain government vehicles (in Iowa, alone, there are more than 3,000) whose owners have been issued special license plates. (App. 00111; App. 00010).

A. The Ordinance Implementation and the IDOT's Administrative Rules

In February 2014, the IDOT, pursuant to Iowa Code § 307.10(15), as approved by the Iowa Transportation Commission, published a series of Administrative Rules at IAC 761-144. (App. 00090). The Rules apply to "local

[1] The Ordinance allows for enforcement of *speed* limits at certain fixed-radar and mobile-unit-radar locations, with fines specified by the Ordinance. It also allows for *red-light running* enforcement. This case involves—and, therefore, the focus of all arguments is upon—the enforcement of the Ordinance's speed provisions as applied to fixed-radar locations on interstate highway I-380.

jurisdictions using or planning to use [ATE] on the primary road system," which includes the state's interstate highways. Iowa Admin. Code § 761.144.4(2)(a). Two provisions implicate the City's unlawful use of ATE equipment at I-380 Southbound at J Avenue:

a. Iowa Administrative Code § 761—144.6(1)(b)(10), directs that ATE cameras shall, "not be placed within the first 1,000 feet of a lower speed limit."

b. Iowa Administrative Code § 761—144.6(4), directs that ATE equipment must be calibrated, at least quarterly, to "ensure accuracy and reliability," independent of the ATE equipment's owner, by "a local law enforcement officer").

(App. 00090). The radar camera equipment fixed at I-380 J Avenue Exit is only 896 feet beyond the sign that reduces the speed limit from 60 mph to 55 mph. (App. 00095).

According to a document presented by the City at Trial, and objected-to by Ms. Leaf (the creator of the document was not present at trial), on June 24, 2014, *more than seven months* prior to Ms. Leaf's alleged infraction, one of Gatso's employees, Robert Ortega, and not a local officer, calibrated the radar unit (but not the camera) fixed above Lane 2 on I-380 Southbound at J Avenue. (App. 00132).

B. The Alleged Violation of the ATE Ordinance

On February 5, 2015, Ms. Leaf drove her Ford Mustang, returning home with Billy Heeren, her former husband and now companion, from an eye examination at an office located on the northerly edge of Cedar Rapids, traveling southbound on I-380, in the direction of the J Avenue Exit. (App. 00024).

Ms. Leaf was driving very cautiously because, earlier that day, when traveling northerly on I-380, she and Mr. Heeren had observed the glare of ice and very slick conditions resulting in accidents involving southbound traffic. (App. 00026). The slippery conditions had been confirmed with others at the eye doctor's office; while there, Ms. Leaf had texted her son a road condition report, warning him of slick roads and accidents on I-380 Southbound. (App. 00027). As a result, upon the return trip on I-380 Southbound, with ice still on the surface, Ms. Leaf drove slower than a lot of the other vehicles, who were passing her on both sides. (App. 00027-00029). She recalls that, as she approached the J Avenue Exit, she was traveling between 50 and 55 m.p.h. (App. 00027-00028, App. 00037).

The speed limit at that location is 55 m.p.h. (App. 00023-00024). Ms. Leaf's passenger, Mr. Heeren, at trial, testified that the conditions of the highway had been slippery, that Ms. Leaf had proceeded carefully, and that she had been traveling between 50 and 55 m.p.h. in the J Avenue exit vicinity.

(App. 00081-00087).

C. The Administrative Hearing

Sometime after Gatso's radar had computed Ms. Leaf's vehicle's speed and cameras had taken photographs of her vehicle, Gatso electronically forwarded information about that "event" to the City's police department. (App. 00150-00151; App. 00045). On some undocumented date, Officer Harvey Caldwell reviewed the information and confirmed identifying license plate and registration information about Ms. Leaf's vehicle. (App. 00045). He did not independently calculate the speed of Ms. Leaf's vehicle; rather, he merely confirmed that Gatso's calculated speed was at least 12 miles per hour over the posted speed limit. (App. 00045-00046, App. 00051).

Neither Officer Caldwell nor any other City employees has ever calibrated Gatso's equipment. (App. 00053-00054). Upon reviewing the electronically-transmitted "event" information from Gatso, Officer Caldwell signed a sworn "Certificate," in his capacity as "Approver," ostensibly attesting that Ms. Leaf's vehicle was operated in violation of the City's Ordinance. (App. 00045-00046).

Gatso issues documents, under the City's logo, styled as "Notice of Violation." (App. 00077). Several weeks after Ms. Leaf's February 5 trip, she received by mail such a document, alleging that, on February 5, 2015, the vehicle owned by her, traveling on I-380 Southbound near J Avenue, at Lane 2,

had been moving at 68 m.p.h. in a 55 m.p.h. zone. (App. 00120-00121). Ms. Leaf believed there had been some mistake; she knew she had not been speeding on that occasion. (App. 00029).

The Notice of Violation threatened adverse credit reporting agency reports for unpaid civil penalties.. (App. 00120-00121). The Notice of Violation informed Ms. Leaf of the five defenses recognized under the Ordinance. (App. 00029).

It directed that, to contest the Violation, she must call a designated telephone number or go online to schedule an administrative hearing. (App. 00121). The Notice of Violation did not inform Ms. Leaf of her ability to wage her contest directly in the Iowa District Court. (App. 00120-00121).

The Gatso employee who answered Ms. Leaf's call said that the only administrative hearing date and time available would be March 4, 2015, at 7:30 p.m., to be held at the Cedar Rapids Police Department, even though Ms. Leaf informed the employee that it would not be possible for her to attend a hearing at that time because of a family commitment. (App. 00029000-30).

On February 19, 2015, Ms. Leaf wrote a personal letter to the Chief of the Cedar Rapids Police Department, asking for another time to hold the administrative proceeding. (App. 00133-00135; App. 00029-00030). She inquired as to why the hearing could not be held during "regular business hours," so that she could attend. (App. 00133-00135; App. 00030-00032). She

sent the request by certified mail. She received no response. (App. 00133-00135; App. 00030-00032).

The administrative hearing process is conducted by a so-called, "Administrative Body," chaired by an "Administrative Hearing Officer." (App. 00124-00125). That person is not appointed by any publicly-accountable official. Rather, he or she is typically a friend of, and is appointed by, police officers. (App. 00072-00073).

In the case Ms. Leaf's Hearing Officer, Chris Mayfield, he is the son of a former police officer; he knows a few police officers. (App. 00072-00073). Hearing Officers are not confined to the defenses set forth in the Ordinance or described in the Notice of Violation; 50 percent of the alleged Violations are dismissed for reasons such as one's wife having a baby, or road rage, among others. (App. 00065-00066, App. 00077-00079). Hearing Officers contend that they have "just as much discretion" to dismiss Violations as do Police Officers on the beat. (App. 00078-00079). No records of administrative hearings are made or preserved; neither recordings nor notes are made or kept of them. (App. 00067-00068).

On March 4, 2015, at 7:30 p.m., while Ms. Leaf was attending to family matters, she received a telephone call from a person who identified himself as the Hearing Officer; she explained that she was unable to attend the hearing, and she tried to explain to him why the alleged Violation was in error. (App.

00020-00021). The Hearing Officer, however, was unwilling to listen to anything Ms. Leaf said. (App. 00021). She informed him that there was "no way" that she was speeding. (App. 00021). After they talked a few minutes, the Hearing Offer told her, "I find you guilty, you need to pay the fine." (App. 00021). In response, Ms. Leaf told him that she wanted to appeal his decision; she did not want to pay for something she did not do. (App. 00041-00042). The Hearing Officer told Ms. Leaf to "just go ahead and pay the fine," because if she did not do so, and she appealed his decision, "it could cost [her] hundreds of dollars." (App. 00032-00033). The Hearing Officer did not mention or offer to send an appeal form to Ms. Leaf. (App. 00040-00041). A written document, styled, "Findings, Decisions and Order" with Mr. Mayfield's name affixed, would later be issued, setting forth that the City's "Citation" had been "sustained," by a *"preponderance of the evidence."* (App. 00124-00125) (emphasis added). A fine of $75.00 was imposed; she was instructed how to pay the penalty. (App. 00124-00125).

Ms. Leaf's daughter is adept at using computers; but neither her daughter nor Ms. Leaf could find a way to access an appeal form from Gatso's website. (App. 00041-00043). On March 9, five days *after* the telephonic administrative hearing had been held, Ms. Leaf received a mailed notice, postmarked in Boston, Massachusetts, on March 5, 2015, from Gatso, indicating that her administrative hearing would be held four days *earlier*, on

March 4—the very date she had objected-to, yet, the very date and time at which Hearing Officer Mayfield had called. (App. 00136-00137; App. 00033-00034).

Ms. Leaf drove to the Police Department, obtained an appeal form, filled it out, and, on March 16, 2015, sent it in. (App. 00126; App. 00021-00022, App. 00035-00036).

On April 6, 2015, *three weeks after she had filed her notice of appeal*, Ms. Leaf received by mail another document bearing the City's logo and styled "Notice of Determination / 2nd Notice," inferring that she had failed to respond to the initial Notice of Violation, and, indicating that the City had made a determination of liability against her. (App. 00138-00140). The document advised her of her right to appeal the decision to the Small Claims Division of the Iowa District Court in Linn County by filing the appeal to "the City of Cedar Rapids Police Department Traffic Bureau"—something she had done on March 16, 2015. (App. 00138-00140).

In the interim, as she awaited the approach of her scheduled May 26, 2015 trial, before the Magistrate Court, Ms. Leaf found on Gatso's website that she was allegedly liable for a "bad debt." (App. 00153).

D. The IDOT Determination of Unlawfulness

The IDOT, in its Annual Evaluation of the City's ATE system, published on March 17, 2015, set forth its determination that the City's ATE

equipment at I-380 Southbound at J Avenue was too far removed from any perceived hazard on that highway and violated the express minimum-distance notice provisions of Iowa law. (App. 00095).

In ordering the ATE equipment's removal, the state agency required that, if re-located, the radar equipment must be placed closer to the interstate highway's so-called "S" curve, which, according to the City, is an area of heightened risk to the traveling public. (App. 00095).

The City appealed the Evaluation Order. In reply, on May 11, 2015, IDOT Director Paul Trombino III, upheld the IDOT's initial decision, which had commanded the City to remove the ATE equipment located at I-380 Southbound J Avenue Exit. (App. 00108).

E. The Trial of Marla Leaf

When Ms. Leaf was finally able to have access to court, the City's proof of her vehicle's speed on February 5, 2015, was, in all respects, based on hearsay evidence, which was the subject of a series of timely objections. (App. 00050, 0059-00060, 00062, 00064-00065).

The City's first witness, Police Officer Harvey Caldwell, had not observed Ms. Leaf's vehicle on February 5, 2015; he had not independently performed any calculation of her speed. (App. 00061-00062). The only calibration documents presented by the City related to the radar/camera equipment used by the City to prosecute Ms. Leaf had been conducted by a

Gatso employee who was not present at trial and whose work had been performed more than seven months prior to the alleged speeding event. (App. 00061-00062, 00070-00071).

The hearsay calibration evidence did not indicate the angle at which the fixed radar had been placed, which angle, according to Police Offer Mark Asplund, would significantly affect the calculation of speed. (App. 00071-00073). The City purports to perform routine, perhaps quarterly, drive-through "calibrations" of Gatso's radar equipment. (App. 00063-00065; App. 00069-00070). However, despite Ms. Leaf's subpoena *duces tecum* (quashed by the City prior to trial; App. 00011-00014) requesting calibration documentation, the City failed to produce any such evidence in support of its burden of proof as to the accuracy of its speed allegation. (App. 00013-00016). Ironically, had Officer Asplund, the City's witness, been asked to bring documents related to calibrations performed on I-380 Southbound at J Avenue, he reported that could have done so. (App. 00069-00071).

ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT THE CITY HAD PROVEN THE VIOLATION BY CLEAR, SATISFACTORY, AND CONVINCING EVIDENCE

A. Standard of Review.

This Court reviews the district court's decision of an action at law for "correction of errors at law." *Lewis v. Jaeger*, 818 N.W.2d 165, 175 (Iowa 2012) (citations omitted).

B. Marla Leaf's Vehicle Was Not Speeding in Violation of the Ordinance on February 5, 2015, and She Provided the Only Credible, Admissible Evidence on the Vehicular Speed Issue

Vehicle Owners accused of violating the Ordinance, such as Ms. Leaf, are shunted by the City and Gatso to administrative hearings subject to a "preponderance of evidence" standard. (App. 00124-00125). Iowa Code section 364.22(6)(a) requires that the City prove Marla Leaf's violation of the Ordinance by "clear, satisfactory, and convincing evidence." *See also Hensler v. City of Davenport*, 790 N.W.2d 569, 589 (Iowa 2010) (citation omitted). Evidence is clear, satisfactory, and convincing if there is no serious or substantial uncertainty about the conclusion to be drawn from it. Iowa Civ. Jury Instructions 100.19. The City must prove both that "the municipal infraction occurred and that the defendant committed the infraction" by this standard. Iowa Code § 364.22(6)(b) (2014); *see also City of Davenport v. Seymour*, 755 N.W.2d

533, 542 (Iowa 2008) (holding that the City must prove all elements of a civil infraction by "clear and convincing evidence").

Ms. Leaf adamantly denied she was speeding on February 5, 2015. (App. 00026-00028). Eyewitness Billy Heeren, similarly-testified. (App. 00084-00085). Ms. Leaf and Mr. Heeren recall the day specifically; treacherous driving conditions resulted in her careful, slow driving. (App. 00026-00028, 00082-00085). Despite the sworn testimony of the vehicle's operator and only eye witness as to the speeding element of the Ordinance to the contrary, the district court held that Ms. Leaf's vehicle was traveling in excess of the speed limit. The court based its liability determination on Cedar Rapids Police Officer Mark Asplund's testimony to the effect that "Gatso calibrates the ATE radars annually." (App. 00157). The only evidence presented by the City, however, over Ms. Leaf's timely objection (App. 00062-00063), was that the most recent calibration of the radar equipment used to calculate Marla Leaf's speed had been conducted by a Gatso employee more than seven months earlier, on June 25, 2014. (App. 00060-00062). Mr. Ortega was not called as a witness by the City to lay a foundation for the document's admission or to allow for his cross-examination. (App. 00059-00061).[2]

[2] As the district court recognized, de novo review is required of an appeal from a small claims matter. *Roeder v. Nolan*, 321 N.W.2d 1, 3 (Iowa 1982). While weight is given to factual findings, including witness credibility, the district court was not bound by the magistrate's findings. *Jack Moritz Co. Mgmt. v.*

This was error. Without ever analyzing the credibility of the only eye-witnesses to the event, the district court appears to have focused on the (inadmissible) hearsay documentary evidence that the City contended proved that the radar equipment was functioning properly.[3] This also ignored the inconsistent testimony with respect to Gatso's equipment's functioning: the City's witnesses asserted that the radar allegedly shuts off if it is malfunctioning, but then also described erroneous batches of citations being sent by Gatso where there was clearly something wrong with that equipment that had wrongfully resulted in Ordinance violation allegations. (App. 00054-00055, 00059-00061). Camera/radar evidence is imperfect, and was offered in the face of certain eye witness testimony to the contrary.

Walker, 429 N.W.2d 127, 128 (Iowa 1988) (citation omitted). Just as had the magistrate, below, the district court recognized the very issue that neither court evaluated, in any manner: the credibility of the only two eye witnesses to the events of February 2015. After describing the duty to weigh the credibility of witnesses, the magistrate then described Gatso's calibration, performed more than seven months prior. (App. 00147). The magistrate's notes do not demonstrate any weighing of the credibility of Ms. Leaf and Mr. Heeren, and the testimony on calibration is not even mentioned. (App. 00142-00145). The district court followed the exact same course, describing credibility of witnesses, generally, but only citing the City's hearsay testimony about calibration conducted by Gatso with respect to the accuracy of the radar equipment. (App. 00149)

[3] Since February of 2014, the IDOT has required that ATE equipment be calibrated quarterly by a police officer. Iowa Admin. Code § 761-144.6(4). Ms. Leaf argued that the City's noncompliance with these minimal calibration rules was material to her belief that she had been wrongfully accused of speeding; in error, that non-compliance was not considered as part of the "credibility" (i.e., accuracy) analysis of the cameras.

Ms. Leaf timely lodged hearsay objections to the introduction of the City's offered calibration document and testimony about it, but without success. (App. 00062). Moreover, the angle of the radar equipment, when permanently mounted above a lane of traffic, can affect the accuracy of radar speed calculations; that angle information was admittedly not included on the calibration document or analyzed by any witness presented by the City. (App. 00071-00073).

While the admission of hearsay evidence is generally reviewed for an abuse of discretion, it "must be excluded at trial unless admitted as an exception or exclusion under the hearsay rule." *State v. Dullard*, 668 N.W.2d 585, 589 (Iowa 2003) (citations omitted). There is therefore "no discretion to admit hearsay in the absence of a provision providing for it." *Id.* The legal question of whether something is hearsay is therefore reviewed for correction of errors at law. *Id.*

This calibration document, and the information contained therein, was introduced by someone other than the author to "prove the truth of the matter asserted,"—or, in this instance, the bootstrapped proposition, that the calibrated equipment was accurately measuring speed more than seven months later. This is hearsay evidence—with all of the attendant problems as to accuracy and credibility when the author of the document cannot be cross-examined. Iowa R. Evid. 5.801(c). It was error for the trial court to have

allowed the calibration document into evidence, an error further compounded when the district court relied on the magistrate's decision. *Dullard*, 668 N.W.2d at 589 (describing the presumption that inadmissible hearsay is prejudicial "unless otherwise established"). Ms. Leaf's rights were prejudiced; this constitutes reversible error. *Vine St. Corp. v. Council Bluffs,* 220 N.W.2d 860, 863 (Iowa 1974) (holding that prejudicial admission of hearsay is reversible error).

The burden of proof[4] pursuant to the Ordinance is on the City. The City did not provide *any* reliable evidence to meet its burden.[5] Ms. Leaf did so. The City may not prove liability through the use of inadmissible, hearsay evidence. Such a problematic document should not have been more credible than two eye witnesses testifying under oath. The district court erred in failing to dismiss the citation against Marla Leaf for failure of proof.

[4] As noted, the burden of proof to which the City was held only became "clear, satisfactory and convincing" in the small claims civil infraction lawsuit and subsequent appeal. *See* App. 00122-00123.

[5] The district court did not explicitly reference the "drive-throughs" conducted by the City's Police Department to test the accuracy of the cameras, although they were mentioned by the magistrate. (App. 00147). Thus, Marla Leaf presumes that the district court's decision as to the accuracy of the alleged speed of her vehicle was based solely upon the dated calibration document.

II. THE DISTRICT COURT ERRED IN HOLDING THAT THE ORDINANCE DID NOT UNLAWFULLY GRANT JURISDICTION TO THE ADMINISTRATIVE BOARD OR HEARING OFFICER

A. Standard of Review.

"A trial court's determination of whether a local ordinance is preempted by state law is a matter for statutory construction and is thus reviewable for correction of errors at law." *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 339 (Iowa 2015) (citation omitted).

B. The Ordinance is Preempted by Iowa Code sections 364.22(4), (6) and 602.6101

The Ordinance provides that one may contest a citation by requesting an administrative hearing at the City's Police Department "before an administrative appeals board (the "Board") consisting of one or more impartial fact finders." Cedar Rapids Mun. Code § 61.138(e)(1). Ms. Leaf's Notice of Violation contained the following language under the "I CONTEST THIS VIOLATION" heading: "You have the right to contest this violation at an administrative hearing or by mail if you reside outside the State of Iowa." (App. 00121). Nowhere on the Notice of Violation is direct access to the Iowa District Court referenced.[6]

[6] Nor does the Notice inform its recipient that, if the administrative hearing route is taken, the Ordinance imposes a lesser burden of proof upon the City to prove liability than would be borne by the City in the Iowa District Court.

The district court held that it was "constitutionally permissible for the City to provide for an impartial and detached administrative board to hear contests … regarding the issuance of an ATE citation." (App. 00158).[7] Judge Grady cited the Iowa's Constitution Municipal Home Rule provision (art. III, §38A) and Iowa Code section 364.1 in coming to this conclusion. (*Id.*). This was error.

Ms. Leaf believes that the Ordinance is preempted by Iowa Code sections 364.22(4), (6) and 602.6101. (Defendant's Brief to Iowa District Court, pp. 23-25). The district court did not clearly address this issue. The doctrine of preemption, applicable to local affairs, "is that municipalities cannot act if the legislature has directed otherwise." *Seymour*, 755 N.W.2d at 538. Implied preemption "occurs when an ordinance prohibits an act permitted by statute, or permits an act prohibited by statute." *Id.* (citation omitted); *see also Goodell v. Humboldt County*, 575 N.W.2d 486, 502 (Iowa 1998) (holding that the ordinance enacted by a county—pursuant to the county's home rule authority—was preempted as it allowed the county to do "what the statute directly forbids").

[7] It is unclear how the district court determined that the administrative board was "impartial and detached." Chris Mayfield, Marla Leaf's "administrative board," was a son of a police officer, and his decisions can be overruled by a police officer. (App. 00073-00074). The police officer is therefore acting as prosecutor, key witness, judge and jury.

To prove this form of implied preemption, or conflict preemption, the "local law must be 'irreconcilable' with state law." *Id.* at 539 (citation omitted).

Iowa established a unified trial court system in which the "district court has exclusive, general, and original jurisdiction of all actions . . ." Iowa Code § 602.6101. Even more specifically, Iowa Code section 364.22(6)(a) requires that a municipal infraction "shall be tried before a magistrate, a district associate judge, or a district judge in the same manner as a small claim." By contrast, the only means to contest an alleged citation described in the Notice of Violation (and by the Gatso employee who answered the telephone number set forth on that document) is that of an administrative hearing. (App. 00029-00031). This process is incompatible with Iowa Code section 364.22(6)(a). In fact, Police Officer Asplund, when describing the relationship between the administrative hearing appeal process to which Ms. Leaf was forced to participate telephonically with the subsequent proceeding convened to consider the City's lawsuit against her, refers to the latter proceeding in the Iowa District Court sitting in Small Claims, as "court-court." (App. 00066-00068).[8] One cannot simultaneously have an administrative hearing to determine a Vehicle Owner's

[8] Moreover, in response to a question as to whether a vehicle owner is threatened regarding a right to "appeal," the police officer testified that one is informed that if you lose in "court court," you will be assessed about $150 in filing fees on top of the initial $75 fine. (App. 00066-00068). So without any right to an impartial fact-finder, one is already assessed costs more than double (now $195) the amount of the citation in order to "appeal" to finally access the district court. (App. 00141).

liability, on the one hand, and, also, on the other hand, have the jurisdiction statutorily conferred to a magistrate or district judge to determine that same liability. Either the case is tried before a magistrate, district associate judge, or district judge, or it is not. Threatening one with the right to "appeal" an administrative officer's decision with additional fines is not the process promised by Iowa law. (App. 00066-00068).

In addition to preemption by (6)(a), section 364.22(6)(b) preempts the Ordinance where findings are made by the administrative board based on a "preponderance of the evidence." (App. 00124-00125).[9] The lower burden of proof is irreconcilable with Iowa Code section 364.22(6)(b), which requires that the city prove a "municipal infraction occurred . . . by clear, satisfactory, and convincing evidence." The Iowa Supreme Court presaged such irreconcilability when it noted that the statutorily-required burden of proof was the only option. *See Seymour*, 755 N.W.2d at 538 (holding that Davenport's ATE Ordinance was

[9] It is unclear how one contests the decision of the administrative board, or the standard of review to which the contest would be subjected. Although the City describes the administrative hearing "Order" as being subject to an "appeal," a vehicle owner actually must request that a separate lawsuit be initiated against him or her. Does the magistrate show any deference to the "Order" issued by the "Board" with the assistance of the police officer? Rather than feeling as if one is appealing an unjust result from the administrative hearing, one instead asks to be sued. There is therefore no clear procedural path allowed to contest the fact that the unlawful "preponderance of evidence" burden of proof standard was used in the administrative hearing. After being forced into an unlawful administrative process, a lower standard is used in that forum to prove one's liability.

not preempted by Iowa law because it applied the appropriate clear, satisfactory and convincing standard required). A lesser burden of proof on the City in a forum, convened by a friend of the police officer, with the police able to make final determinations, is not only wrong—it is preempted by Iowa law.

Finally, under the Iowa Code, only a police officer is allowed to issue a "civil citation" based on an alleged municipal infractions, and, the charging papers must be served personally, by certified mail,[10] or by publication. Iowa Code § 364.22(4). In this instance, however, it is Gatso, and not a police officer, that issues[11] the civil citation (or Notice of Violation), by regular mail, a process that is nowhere contemplated by, and is irreconcilable with, Iowa law.

These are direct conflicts. The municipal infraction "shall" be heard before a magistrate, district associate judge, or district judge, not a "board," even if it were impartial. The burden of proof shall be by clear, convincing and satisfactory evidence, and not by a preponderance of the evidence. The administrative process invoked by the City, either when viewed in segments, or when taken as a whole, is irreconcilable with Iowa law. *See Iowa City v.*

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[10] The district court erred in finding that the Notice of Violation is sent to owners "by certified mail." (App. 00155). Ms. Leaf received the Notice of Violation in the mail; there was no part of the record indicating that it was sent via certified mail; it was not. (App. 00017-00019) (describing receipt of notification in the mail).

[11] Officer Asplund described this in his testimony when referencing malfunctions in the radar system that require that Gatso would "reissue the ticket." (App. 00076-00077).

Westinghouse Learning Corp., 264 N.W.2d 771, 773 (Iowa 1978) (quoting the definition of irreconcilable as "impossible to make consistent or harmonious") (citation and internal quotations omitted). Similarly, Gatso issuing citations via regular mail is irreconcilable with the requirement that a police officer send it via certified mail. *Westinghouse Learning Corporation* is significant in that the Court held that the statute had set forth a process, and the city, through an ordinance, did not follow that process, which rendered said ordinance preempted. *Id.* Similarly, Iowa Code section 364.22(4) and (6) set forth a process to be followed with municipal infractions by a city, with a specified burden of proof, and the City has not followed it. Such derogations are preempted. One must choose "one enactment over the other," *Seymour*, 755 N.W.2d at 541; in such a case, state law preempts. The district court erred in failing to so hold.

C. The Ordinance is Further Preempted by Iowa Administrative Code Section 761-144.6

Pursuant to its statutorily-delegated authority, the IDOT issued its Rules in February of 2014, as codified in the Iowa Administrative Code. The City ignored these Rules to Ms. Leaf's jeopardy. One Rule required the City to establish at least a 1000-foot distance between a posted speed limit reduction sign and the fixed ATE equipment; the second Rule required the City to perform quarterly calibrations of the radar equipment by a law enforcement officer, and not by corporate owners of the equipment. Iowa Admin. Code §§

761-144.6(1), (4). The fixed radar and camera equipment used to calculate Ms. Leaf's vehicular speed, resulting in the citation issued to her, was not in compliance with either of these requirements. (App. 00095 (describing 896 feet), App. 00061-00062). In addition, Iowa Administrative Code section 761-144.4(1)(c) provides that ATE scheme should only be used on interstate highways only in extremely limited circumstances given that such roadways are the safest ones and are used by many vehicle operators unfamiliar with local conditions. Given this noncompliance, the IDOT ordered that the City remove the ATE equipment located at J Avenue Southbound on I-380. (App. 00095). The City relied solely on its unlawfully-placed ATE equipment to prosecute Ms. Leaf. The City's issuance of citations from this location had been preempted by the IDOT's rules and subsequently, more expressly, by its express equipment-removal order, a final agency action, prior to her trial on May 26, 2015. (App. 00098-00108).

III. THE CITY HAS UNCONSTITUTIONALLY DELEGATED POLICE POWER TO GATSO USA, INC.

A. Standard of Review

Constitutional claims are reviewed de novo. *Star Equip., Ltd. v. State*, 843 N.W.2d 446, 451 (Iowa 2014) (citation omitted).

B. The City Unlawfully Delegated its Police Powers to Gatso to Make Discretionary Determinations

The separation of powers of state government is embodied in the Iowa Constitution: "no person charged with the exercise of powers properly belonging to one of these departments [Legislative, Executive, and Judicial] shall exercise any function appertaining to either of the others . . ." *In the Interest of C.S.*, 516 N.W.2d 1, 5 (Iowa 1983) (quoting Iowa Const., art. III, § 1).

"[A] fundamental principle of government" is that a "municipal corporation 'cannot surrender, by contract or otherwise, any of its legislative and governmental functions and powers, including a partial surrender,' unless authorized by statute." *Warren Cty. Bd. of Health v. Warren Cty. Bd. of Supervisors*, 654 N.W.2d 910, 913-14 (Iowa 2002) (citation omitted). A key distinction is drawn between delegating a right to perform acts involving, on the one hand, "little judgment or discretion" versus, on the other hand, those involving "discretionary power conferred by law." *Id.* (citations omitted). The latter is forbidden. *Id.*

The City has unlawfully surrendered its discretionary police powers to Gatso, a private, for-profit corporation that holds a contingency fee interest in all fines collected from Vehicle Owners under the Ordinance. It is Gatso's equipment that calculates speed, not the City or its police officers. (App. 00051). It is Gatso's employees, and not the City's Police Department, who

calibrate the radar equipment. (App. 00132; App. 00053-0054, 00060-00062). Gatso's equipment, alone, determines who is eligible for prosecution, and who is not. It filters "events" before sending any of them to the City for review by a police officer. After a brief review, if "approved" by a Police Officer, Gatso creates Notice of Violation documents, under the City's logo, and then mails them out to Vehicle Owners. (App. 00050).

The City's police officers received their training from Gatso as to how the approval process works. (App. 00057-00059). Sometimes citations are sent to the City police in error by Gatso and police commanders make a broad determination that they be dismissed. (App. 00051-00052). The City's own witness testified that it is only "solely" the police officer's decision *once* the tickets "come in, and we see them." (App. 00048-00049). Gatso answers questions from Vehicle Owners who have received Notice of Violation documents over the phone on behalf of the City; Gatso employees give advice to citizens as to whether and how to pay civil fines. (App. 00133).

These delegated tasks, involving fundamental "prosecute" versus "don't prosecute" decisions, made by Gatso, are ones that should be made by police officers only, not by agents of a privately-owned for-profit corporation that has a contingency fee interest in those decisions. "Screening," by its nature, involves making discretionary decisions. The fact that Iowa law requires that police officers mail municipal infractions by certified mail demonstrates a

determination by the Iowa General Assembly that this is the type of police power that should not be delegated. Iowa Code § 364.22(4). While the district court recognized that "Gatso significantly participates with the City" in implementing the Ordinance, it erred in holding that the City had not unconstitutionally delegated its police powers. (App. 00163).

Under a similar statute, involving an analogous relationship between a City and a for-profit corporation, a Florida court held that an unlawful delegation of police powers had occurred. *See City of Hollywood v. Arem*, 154 So. 3d 359, 364-65 (Fla. Dist. Ct. App. 2014) (holding that based on a Florida statute where only law enforcement officers can issue citations for traffic infractions, the vendor (ATS) making the initial determination of which citations a traffic enforcement officer reviewed rendered the system an unlawful outsourcing of statutory authority). The *Arem* Court described a prosecutorial process under which the vendor initially determined who was subject to prosecution and then the officer clicked "Accept," to move forward with the prosecutorial process—which is exactly how the City's prosecutorial approval process works with Gatso. *Id.* at 365; App. 00057-00058. These are not perfunctory duties; they are discretionary determinations, police, and judicial acts. They are beyond even making rules; they are enforcing the law. *See Bunger v. Iowa High Sch. Athletic Asso.*, 197 N.W.2d 555, 562-63 (Iowa 1972)

(holding that a school board's delegation of its rule-making authority was invalid). The district court's decision should be reversed.[12]

C. The City Further Usurped Judicial Powers and Unconstitutionally Delegated them to the Administrative Hearing Officer

Whether analyzed as an unlawful grant of jurisdiction to the administrative hearing officer preempted by Iowa law, or as an unlawful delegation of judicial power, it is clear that the City had no power to create the "Board" to hear these issues. The separation of powers requires that police officers not be the ones to make judicial decisions, nor immediate friends of police officers. Hearing Officers are also told that they are making "discretionary" decisions as police officers would along the side of the road, and not that they are making judicial findings. (App. 00078-00079). This is an unlawful delegation of judicial power by the Police Department to a volunteer that the City does not even possess.

[12] It is unclear what testimony the district court was referencing in describing the "large percentage of captured violations" that are not issued when officers use their judgment regarding "extenuating circumstances." App. 00163 (citing App. 00048-00049). It sounds like the 50% figure of violations that are rejected after they are contested, and not prior to their issuance by Gatso.

IV. THE DISTRICT COURT ERRED IN HOLDING THAT THE ORDINANCE DID NOT VIOLATE IOWA'S DUE PROCESS CLAUSE

A. Standard of Review

Constitutional claims are reviewed de novo. *Star Equip., Ltd.*, 843 N.W.2d at 451.

B. Procedural Due Process is Violated When the Statutorily-Required Process is not Followed

Ms. Leaf's procedural due process rights were violated by the implementation of the Ordinance. Rather than having direct access to the district court, the Notice of Violation sent to Ms. Leaf, and the Gatso employee to whom she spoke when calling the Notice's listed telephone number, both directed her that contesting a citation involved invoking an administrative hearing process. (App. 00120-00121; App. 00029-00030). The Gatso employee further informed When Ms. Leaf indicated that the time of the hearing offered by the Gatso did not work on her schedule, and that she needed to reschedule during normal business hours, she was told that should "just pay it." (App. 00133). Ms. Leaf thereafter sent a letter via certified mail to the Cedar Rapids Police Chief requesting that the hearing be rescheduled. (App. 00133). The request was ignored. Instead, on March 4, 2015, in the evening, Mr. Mayfield, the "Administrative Hearing Officer," called Ms. Leaf to conduct the scheduled "hearing." She explained to him that she could not have been speeding given the inclement weather. (App. 00032). Hearing Officer Mayfield, a son of a

former police officer, with no legal experience or training, proceeded to find her liable based on a "preponderance of the evidence" issued a "Findings, Decision and Order." (App. 00124-00125). The one-person "Administrative Body" (Mr. Mayfield), according to the document, had considered "any motions, evidence and arguments presented." (App. 00124-00125). Thereafter, in a document post-stamped March 5, 2015, one day after Marla Leaf's administrative hearing, Gatso mailed out a Request for an Administrative Hearing form, stipulating the date of the hearing to take place the day before it had been mailed, March 4, 2015. (App. 00136-00137).

Article I, section 9 of the Iowa Constitution protects against state action that "threatens to deprive [a] person of a protected liberty or property interest." *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 690-91 (Iowa 2002). Procedural due process requires "notice and opportunity to be heard in a proceeding that is 'adequate to safeguard the right for which the constitutional protection is invoked.'" *Id.* (citation omitted).

Initially, Marla Leaf has an interest in receiving "due" process before an impartial fact finder, which the Iowa Code has defined in challenging a municipal infraction as having direct access to a "magistrate, a district associate judge, or a district judge." Iowa Code § 364.22(6)(a). There is, therefore, a *statutory* right to such a process: Ms. Leaf need not rely on a constitutional entitlement to a contested case process with sufficient procedural safeguards

(although, as argued below, she believes the factors of that constitutionally-based test clearly balance in her favor). *Cf. Sindlinger v. Iowa State Bd. Of Regents*, 503 N.W.2d 387, 390 (Iowa 1993) ("In the absence of a discernible statutory right, petitioner's claim must rest on a constitutional entitlement to a contested case hearing."). One does not even need to engage in the *Mathews* test, below, if there is a legislative mandate of process. *See Ghost Player, L.L.C. v. State*, 860 N.W.2d 323, 330 (Iowa 2015) (describing the process by which the Iowa Supreme Court first looked for a legislative mandate in determining due process, and where there was none, went through the private interest balance on the right to due process). The statutorily-described process resolves the issue of what process is appropriate. No other process is due. The district court erred in holding that Marla Leaf somehow had access to the "ordinary judicial process" and therefore procedural due process had been met. (App. 00159). In fact, and contrary to that holding, Ms. Leaf had to jump through a variety of hoops and participate in a sham of an administrative process convened by a friend of the police who then, based on a "preponderance of evidence," issued an "Order Ms. Leaf was informed that she could appeal the decision (to "court court") and pay up to $150[13] above the $75.00 fee if she were unsuccessful.

[13] That amount is double the citation amount one would have to pay without "appealing" a citation, which makes it really "no choice at all." *See Williams v. Redlfex Traffic Sys.*, 582 F.3d 617, 621 (6th Cir. 2009) (holding that challenging one's parking ticket where one would have to pay a non-refundable fee higher

(App. 00067-00068). It is particularly noteworthy that the District Court, upon appellate review, held that the *Police Officer* had found Marla Leaf in violation of the charged infraction. (App. 00159). This is consistent with the testimony that the Police Officer in attendance at an Administrative Hearing might overrule the Hearing Officer's decision, but such decision-making certainly is nothing resembling "ordinary judicial process." This is not merely an argument that a "fairer or wiser process" exists. *Cf. Holm v. Iowa Dist. Court*, 767 N.W.2d 409, 417-18 (Iowa 2009). The only process considered "due" by the Iowa General Assembly is appearing before a magistrate, district associate judge, or district judge. Iowa Code § 364.22(6)(a). Anything less is patently not due process (and certainly not fair or wise).

C. The Constitutional Balance of Due Process Factors Weighs in Ms. Leaf's Favor

Even if the failure to follow the statutory process did not give rise to a due process violation, Ms. Leaf's constitutional due process rights were still violated. In analyzing whether such a constitutional violation has occurred, the Court considers the interest protected, and then, if a protected interest is involved, it balances three competing interests:

First, the private interest that will be affected by the official action;

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over and above the cost of the ticket received was "no choice at all."). In every possible way, the City and Gatso attempt to dissuade those from asserting their rights to any access to the district court.

> second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Bowers, 638 N.W.2d at 691 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

The Court has recognized a protected property interest in "not being subject to irrational monetary fines." *Jacobsma*, 862 N.W.2d at 345. Therefore, there is a private interest affected in the property right, as well as in the fundamental right to travel, described below. While the amount of money implicated by a particular civil penalty (here, initially $75.00, now $195.00) may not seem significant to some persons, due process should not depend on one's wealth, and even that amount of funds is certainly significant to others. In addition, the loss of time (and potentially income from employment) in the wasted administrative "hearing" used by the City is substantial to everyone. There are also the interests of Vehicle Owners that are threatened by the City upon its imposition of penalties, such as "formal collection procedures" and "being reported to a credit agency." (App. 00120-00121).

Next, there is a serious risk of erroneous deprivation based on the process used by the City: Ms. Leaf received a Notice of Violation that threatened collection action for unpaid civil penalties. Before even considering whether she should exercise her due process rights to challenge what she

believed to be an erroneous citation, Ms. Leaf was dissuaded from doing so—being told by the Gatso employee who answered the listed telephone number that she should "just pay it." (App. 00133). The risk of deprivation is also serious where the calibration of the radar equipment used to prosecute Vehicle Owners is not done by police officers, but by the equipment's owner, Gatso. Gatso, based on its own speed calculations, determines which Vehicle Owners should, or should not, be prosecuted—subject only to a quick "approval" review by a Police Officer. Thereafter, another police officer decides whether one is liable or not at one's first administrative "hearing." *Cf. Booker v. City of St. Paul*, 762 F.3d 730, 735-36 (8th Cir. 2014) (finding that there would unlikely be erroneous deprivation where a police officer makes an initial determination of sobriety and then a prosecutor must establish probable cause at a preliminary hearing). Furthermore, the Hearing Officer who convenes and conducts the administrative hearing process lacks any authority to render any Order, and those proceedings afford no protections that are routinely provided by a court of law. For instance, Ms. Leaf's corroborating witness, Mr. Heeren, was not present for, and did not testify or provide evidence at the telephonic administrative hearing. Critically, the administrative hearing process does not apply the appropriate burden of proof on the City. (App. 00120-00121). The City, using a process with less protections (no legally-trained officers of the court, no motions can be presented), then applies a less protective burden of

proof standard than that required by Iowa law. As discussed above, this is directly contrary to the requirements of Iowa Code section 364.22(6)(b).

Having to go through a sham of a process (including advice from Gatso employees) is an additional disincentive fully to advocate for one's rights. The administrative hearing process used by the City is constitutionally flawed on many levels. The decisions of the Administrative Hearing Officers are also wildly divergent, without any footing in principles of *stare decisis*. The Hearing Officers purportedly dismiss up to 50% of cases, and state (here, mixing prosecutorial and judicial functions) that, even though they are not Police Officers, they can wield the same amount of discretion as a Police Officer stopping someone on the side of the road in determining whether to impose a civil penalty. (App. 00076-00079). While certain defenses are given in the Notice of Violation, many other defenses have been successful, apparently, including one having a baby, a "gravel truck spilling its load out," and "road rage with another vehicle." (App. 00065-00066).

With respect to the third and final prong of the procedural due process analysis, the government interest is not significant. The IDOT has unequivocally determined that there is no government interest in locating the radar equipment at I-380 Southbound at J Avenue. (App. 00095). In addition, the City has unlawfully delegated, as described above, its government interest to a private corporation, negating any claim of true governmental importance.

Moreover, the cost of using the statutory process provided (access to court) is the same cost to enforce any statute. It cannot be said to be unduly burdensome. If financial gain by The City is not the true purpose of this program, then direct access to the court should not be an issue. If the administrative burdens would be too great if citizens were given direct access to a court with jurisdiction over their claims, then, perhaps, the revenue-generating ATE system simply cannot function within a constitutional framework.

Due process always requires a "constitutional floor of a 'fair trial in a fair tribunal.'" *Botsko v. Davenport Civ. Rights Comm'n*, 774 N.W.2d 841, 848 (Iowa 2009) (citation omitted). As the *Botsko* Court recognized, in analyzing the U.S. Supreme Court's case of *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), where pecuniary interest is involved, "experience teaches that the probability of actual bias on the part of the . . . decision maker is too high to be constitutionally tolerable." *Id.* Here, the Police Officer presenting the evidence, and then possibly overruling the Hearing Officer, has a million reasons to be biased.[14]

[14] While it is not a mayor who makes the decision that fills a city's coffers, the police officers receive direct benefit from the tickets, and they are the ones making final decisions at the administrative hearings. S*ee Rose v. Village of Peninsula*, 875 F. Supp. 442, 448-453 (N.D. Ohio 1995) (analyzing the revenues collected in an Ohio village's mayor's court and the deprivation of due process where the mayor "occupies two practically and seriously inconsistent positions, one partisan, and the other judicial") (citing *Ward v. Monroeville*, 409 U.S. 57 (1972)). Unlike the ATE systems of some cities, the City retains all of the

The Police Department financially benefits from the millions collected from these traffic cameras. *See* Brea Love, *Traffic Cameras Along I-380 Start a Debate Over Revenue Versus Safety*, KCRG-TV9, *available at* http://www.kcrg.com/content/news/Traffic-Cameras-along-I-380-start-a-debate-over-revenue-or-safety--358435221.html (describing the $3,000,000 earned by the City all going to the police department). There can be no appearance of fairness where Police Officers are making adjudicative determinations involving the assessment of penalties. Procedural due process is a question of "line-drawing and balancing," and there is no balance here. *Botsko*, 774 N.W.2d at 852. The procedure actually provided for and required by Iowa law—direct access to the district court—has incredible value. Having access to a proper tribunal at a later date does not rectify the defective due process of the original administrative hearing. *See Ward*, 409 U.S. at 61 (holding that the "State's trial court procedure [could not] be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication.").

The City is also violating the minimum due process requirements of the

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benefit of the fines and it does not appear that the fines are used specifically for traffic safety improvement. *See* Matthew S. Maisel, *Slave to the Traffic Light: A Road Map to Red Light Camera Legal Issues*, 10 Rutgers J. L. & Pub. Pol'y 401, 410-411 (2013) (describing proceeds from ATE systems in Virginia and North Carolina, among others, which go only to fund public schools).

IDOT, and has been doing so since February 2014. Such requirements include giving drivers notice of at least 1000 feet after a speed limit change before a radar unit can be placed to enforce an ATE program. Iowa Admin. Code § 761-144.6(1). In addition, the IDOT, prior to the City's prosecuting Ms. Leaf in small claims court, the appropriate forum, had ordered the removal of the very equipment used by the City to compute Ms. Leaf's speed. At the time of Ms. Leaf's trial, the City had not yet—and, to this day, still has not—complied with that Order. The district court held that the "DOT decisions are immaterial to this matter." (App. 00160). Ignoring the date of the decision in the first due process to which Marla Leaf had access—small claims court trial on May 26, 2015 (after the IDOT's final agency action of May 11, 2015)—the district court noted that the Order removing the camera did not appear to be retroactive and held that no private cause of action existed to enforce the IDOT's rules. Retroactivity is not necessary. The final agency action took place before Ms. Leaf's trial. (App. 00098-00108). Ms. Leaf asserts that Iowa law, as codified by the Administrative Code, is crucial to the constitutional validity of the Ordinance that was the basis of the ATE equipment on I-380 Southbound, which served as the sole basis for the citation issued against Ms. Leaf. At the very least, the IDOT's Rules provide a constitutional floor below which the City cannot and should not fall. This is not a private cause of action based on those Rules; it is a constitutional argument referencing those Rules. The IDOT

mandates that ATE radar equipment be used in limited circumstances on interstate highways, have 1000 feet of notice before a lower speed limit, and be calibrated quarterly by local law enforcement. Iowa Admin Code §§ 761-144.4(1)(c), 761-144.6(1), (4). The ATE equipment fixed on I-380 Southbound at J Avenue violated all of these proscriptions. While Ms. Leaf's citation was still pending, and before her trial, the IDOT ordered that the ATE equipment at that location be moved. (App. 00095). As described below, the IDOT, as the State actor with authority over interstate highways, determined that there was no legitimate state interest for the cameras at that location so far removed from the "S" curves; alternatively, it determined that that location was not rationally related to any legitimate state interest. (App. 00095). The Administrative Rules were passed in February of 2014 and, therefore, were clearly applicable to Marla Leaf's alleged violation. In addition, the March 2015 Evaluation by the IDOT, ordering the removal of the J Avenue Southbound camera and replacement elsewhere, was entered prior to Ms. Leaf's trial.

The Ordinance and its implementation are therefore unconstitutional as a violation of Ms. Leaf's due process rights.

D. Substantive Due Process is Violated by the City's Continued Violation of State Law and the Offense to Judicial Notions of Fairness

The Due Process Clause of the Iowa Constitution has "both substantive and procedural components." *State ex rel. Miller v. Smokers Warehouse Corp.*, 737

N.W.2d 107, 111 (Iowa 2007). Ms. Leaf's substantive due process rights were violated based on the violation of her fundamental right to travel and her property right in the citation fee. *See Zaber v. City of Dubuque*, 789 N.W.2d 634, 640 (Iowa 2010) (holding that the analysis for substantive due process begins with the nature of the right). The scheme set up by the City "interferes with rights 'implicit in the concept of ordered liberty.'" *Id.* (citations omitted). The right to travel is such a right. *Saenz v. Roe*, 526 U.S. 489 (1999).

The Court has recognized the fundamental right to interstate[15] travel has three components: the right to enter and leave another state; the right to "be treated as a welcome visitor rather than an unfriendly alien when temporarily present" in another state; and the right to be treated like citizens of the state to which one recently moves. *Formaro v. Polk Cty.,* 773 N.W.2d 834, 839 (Iowa 2009) (citing *Saenz*, 526 U.S. 489 at 500). In addition, the right has been described as protecting one from "the erection of actual barriers to interstate movement." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 277 (1993).

Traveling on an interstate highway implicates the right to interstate travel. The IDOT recognized this in its rulemaking issued in February of 2014 by noting that interstate highways carry a large number of non-familiar motorists. Iowa Admin. Code § 144.4(1)(c). These non-familiar vehicle owners

[15] The district court erred in focusing solely on Marla Leaf's arguments with respect to intrastate travel, and not interstate travel. *Compare* App. 00161 with Defendant/Appellant's Brief to the Iowa District Court, pp. 29-30.

have the right to be treated as welcome visitors to the State and not "as an unfriendly alien when temporarily present." *Formaro*, 773 N.W.2d at 839. There is a fundamental right to be treated as familiar motorists on interstate highways, and not unwarily to be subject to a speed trap.

When a fundamental right is involved, an infringement upon that right can only be constitutional if it is "narrowly tailored to serve a compelling state interest." *State v. Klawonn*, 609 N.W.2d 515, 519 (Iowa 2000) (citation omitted). The law at issue must meet this test "no matter what process is provided." *ACCO Unlimited Corp. v. City of Johnston*, 611 N.W.2d 506, 510 (Iowa 2000). The City cannot meet its burden to demonstrate a compelling state interest in the cameras that issued Ms. Leaf's citation. Moreover, the Ordinance is certainly not narrowly tailored to serve a compelling state interest. As described more fully below, the ATE scheme does not encompass many of the more dangerous offenders. Semi-truck trailers are a safety risk on interstate highways, but they are exempted from the enforcement of the Ordinance based on Gatso's technological choices. The Ordinance as implemented by the City, in direct violation of State law, is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or a general welfare." *Bakken v. Council Bluffs*, 470 N.W.2d 34, 38 (Iowa 1991). The district court's holding describing the "S-curve that makes up the section of Interstate 380 . . . is a dangerous stretch of road" is inaccurate (Ruling, p. 9); the IDOT clearly

noted that the radar equipment on I-380 Southbound at J Avenue were not located close enough to "the beginning of the critical 'S' curve." (App. 00095).

In addition to the fundamental right to travel, Ms. Leaf clearly has a "property interest in not being subject to irrational monetary fines." *Jacobsma*, 862 N.W.2d at 345. The deprivation of this citation fee "is said to be of constitutional magnitude if it is undertaken 'for an improper motive and by means that were pretextual, arbitrary and capricious, and . . . without any rational basis." *Bakken*, 470 N.W.2d at 39. The Ordinance and its enforcement are the height of arbitrariness and caprice; this is clear from the police officer's description of how contested citations are reviewed. (App. 00065-00067). The speed citations at I-380 Southbound J Avenue are described by the IDOT as "extremely high." (App. 00095). "Safety" is a pretext for the money gained from I-380 Southbound; interstate highways are "the safest class of any roadway in the state." Iowa Admin. Code § 761-144.1(4)(c).

Alternatively, even if a fundamental right were not involved and therefore rational basis applied, the placement of the ATE equipment on I-380 Southbound at J Avenue could not survive the test. The IDOT has determined that such equipment at that location is not necessary for public safety.[16] (App.

[16] In addition to these violations of law, the City and Gatso also continue to threaten or state that they have reported alleged "bad debt" to collection agencies, in direct violation of a recent change in Iowa law. B.A. Morielli, *Threats on Traffic Camera Tickets Violated the Law*, THE GAZETTE, Sept. 30, 2015,

00095). It is therefore impossible for the City to argue that it has a rational basis in placing ATE equipment on I-380 Southbound at J Avenue in circumstances under which the State, the governmental entity with jurisdiction over the interstate highway,[17] has determined definitively that there is no such interest. In other words, the court does not even need to consider whether there is a rational basis (unlike most legislation where it is presumed that one exists based upon its passage by the legislature)[18] because the governing state agency has already been decided that there is not one. Alternatively, the State has definitively determined that the ATE equipment located on I-380 Southbound at J Avenue is not rationally related to any alleged legitimate purpose.

Moreover, the City's violation of State law (e.g., ignoring, first, applicable IDOT regulations and then, second, a subsequent IDOT Order commanding

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available at http://www.thegazette.com/subject/news/government/threats-on-traffic-camera-tickets-violated-law-20150925. While it is uncertain whether they actually take such action, it is surprising that one could be informed that their "bad debt" had been reported to a collection agency while they were exercising their due process rights to challenge the debt itself. *See also* App. 00153.

[17] The City is exercising its due process rights to challenge the IDOT's Order requiring moving of the I-380 Southbound at J Avenue cameras. However, it cannot truly be disputed that the IDOT does not have jurisdiction over the primary state highways. *See* Iowa Code § 306.4. If the City's argument were valid, every city and county in Iowa along an interstate highway could place fixed speed cameras on over-hanging trusses up and down the roadway, notwithstanding IDOT opposition.

[18] By contrast, the City Council, in enacting the Ordinance, made no specific findings as to the placement of ATE equipment at particular locations.

the removal of the ATE equipment) offends judicial notions of fairness and human dignity: citizens, such as Ms. Leaf, cannot rely on their own state laws to protect them when they are subjected to the City's whimsical enforcement of its Ordinance. *See Blumenthal Inv. Trs. v. City of W. Des Moines*, 636 N.W.2d 255, 265-66 (Iowa 2001) (describing substantive due process violations as those that offend judicial notions of fairness and human dignity) (citation omitted); *see also Chesterfield Dev. Corp. v. Chestfield*, 963 F.2d 1102, 1105 (8th Cir. 1992) ("A bad-faith violation of state law remains only a violation of state law."). The State of Iowa provides one set of protections, and then the City violates those protections by maintaining, more than a year later, ATE equipment on I-380, contrary to express provisions of the IDOT.

The district court erred in relying on *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009),[19] which held that no one had a fundamental right to violate a

[19] The Seventh Circuit left open the possibility that a violation of state law may be found regarding the ATE system. *Idris*, 552 F.3d at 567 (noting that the federal court assumed local law authorized the action at issue, and "[w]hether state law permits that action in the first place is a question for state courts, under their own law.") (citing *Minnesota v. Kuhlman*, 729 N.W.2d 577 (2007)). A state court in Illinois recently held that Chicago's ATE scheme violated "fundamental principles of justice, equity and good conscience" when it skipped a step mandated by the city's own municipal code. Spielman, Fran, *Judge, Red-light, Speed-Cam Tickets 'Void'; City Violated Due Process,* CHICAGO SUN-TIMES, February 22, 2016, *available at* http://chicago.suntimes.com/news/7/71/1345175/judge-declares-red-light-speed-cam-tickets-void-city-violated-due-process. So, too, here. Iowa and out-of-state drivers are entitled to no fewer protections when traveling on interstate highways located in the City.

traffic regulation. (App. 00163). This is tautological reasoning. The initial determination must be whether the traffic regulation is valid; the existence of a traffic regulation does not determine whether a fundamental right is being infringed. Marla Leaf agrees that speed limit is valid, but not the Ordinance or its enforcement. Under an agreement between the City and Gatso, the ATE equipment triggers "events" only if a vehicle's speed is calculated to be traveling 12 miles per hour or over the speed limit. (App. 00045-00046). Enforcement of the speed limit by police officers is also certainly not the issue here. *Cf. State v. Ross*, 2003 Iowa App. LEXIS 42, at *12 (Iowa Ct. App. Jan. 15, 2003) (holding that the police officer had a legitimate interest in investigating a potential traffic violation, which did not impinge upon the constitutional right to free travel); *see also United States v. Hare*, 308 F. Supp. 2d 955, 1001 (D. Neb. 2004) (holding that a "*police officer's* enforcement of a valid traffic law does not violate the motorist's right to travel.") (emphasis added).

Ms. Leaf is not asserting a right to drive however she may please; she is certain that she was not speeding on the day that she was issued the citation. Ms. Leaf is asserting a right to travel on Iowa's interstate highway without fear from being prosecuted under an invalid traffic enforcement system. Federal courts have considered what constitutes an infringement on the right to travel, and it can involve less than an actual deterrence to travel. *See, e.g.*, *Mem'l Hosp. v.*

Maricopa Cty., 415 U.S. 250, 257-60 (1974) (holding that one did not need to prove that they were "actually *deterred* from traveling by the challenged restriction") (analyzing *Shapiro v. Thompson*, 394 U.S. 618 (1969) and *Dunn v. Blumstein*, 405 U.S. 330 (1977) (holding that a classification that "operates to penalize those . . . who have exercised their constitutional right of interstate migration" requires a compelling state interest). "A burden may arise from a state statute which requires interstate passengers to order their movements on the vehicle in accordance with local rather than national requirements." *Morgan v. Virginia*, 328 U.S. 373, 380-81 (1946) (analyzing a discriminatory law under the commerce clause). Ms. Leaf's fundamental right to *interstate* travel was violated, and she was deprived of her property for an "improper motive."

As discussed more fully below, Ms. Leaf further asserts the infringement of her right to *intrastate* travel. While the Iowa Supreme Court has not yet recognized the *intrastate* right to travel, it is a "hallmark of a free society . . . perhaps the most cherished of all of our fundamental rights." *Formaro*, 773 N.W.2d at 839 (quoting *City of Panora v. Simmons*, 445 N.W.2d 363, 371 (Iowa 1989) (Lavorato, J., dissenting)). The district court erred in holding that Marla Leaf's substantive due process rights were not violated.

V. EQUAL PROTECTION IS VIOLATED WHERE THE CLASSIFICATIONS MADE ARE NOT RELATED TO THE PURPOSE OF THE ORDINANCE

A. Standard of Review

De novo review is applied to constitutional claims. *Homan v. Branstad*, 812 N.W.2d 623, 629 (Iowa 2012).

B. The Distinctions Between Certain Vehicle Owners is in no way Related to the Ostensible Purpose of Safety

Article I, section 6 of the Iowa Constitution guarantees equal protection of the laws to all citizens. *Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335, 350-51 (Iowa 2013). In evaluating equal protection claims, Iowa courts consider whether "laws treat all those who are similarly situated *with respect to the purposes of the law alike*." *Id.* (citation omitted) (emphasis in original). Upon finding that the equal protection clause is implicated, the court then applies the appropriate level of scrutiny. *Id.*

The ostensible[20] purpose of the Ordinance is safety. The district court speculated that it might be dangerous for a police officer to make a traditional traffic stop along I-380 Southbound. (App. 00163). While the Ordinance does not make any enforcement distinctions among types of motor vehicles, the City and Gatso, in implementing the Ordinance, do make such distinctions—in fact,

[20] The "claimed state interest must be 'realistically conceivable'" and have a "basis in fact." *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7-8 (Iowa 2004) (citations omitted). Given the IDOT's findings, it is questionable whether the City can continue to claim that safety is the true goal of its Ordinance.

they eliminate from consideration tens of thousands of vehicles for reasons wholly unrelated to safety. By a discretionary choice in terms of the type of equipment it chose to use, Gatso excludes from prosecution virtually all semi-truck owners pulling trailers whose *rear* license plates are not included in the City's chosen database; in addition, it excludes more than 3000 government vehicles whose license plates are not in the database. (App. 00111). With respect to the legitimate *safety* purpose of the Ordinance, there is no rational distinction between any class of motor vehicle, and, by extension, any Vehicle Owner: in fact, semi-trucks operated on primary highways could be considered a *greater* danger to safety on interstate highways than other vehicles. All Vehicle Owners are therefore similarly situated for safety purposes. The distinction between semi-truck trailers and other vehicles, or government vehicles and Marla Leaf's vehicle, as related to the goal of safety, is "so attenuated as to render the distinction arbitrary or irrational." *Racing Ass'n of Cent. Iowa,* 675 N.W.2d at 8. Distinguishing between semi-truck trailers and cars is as arbitrary as distinguishing between racetracks and excursion boats for the purpose of taxes on gambling revenue. *See id.* at 15 (holding that such classifications for said purpose serve "no legitimate purpose . . . other than an arbitrary decision to favor excursion boats.") Exempting certain vehicles from prosecution under the Ordinance on no other basis than their license plate configuration is under

inclusive[21] and irrational. Allowing out-of-state vehicle owners a different process (although still not due) is also irrational: contesting by mail is only granted to those who live out of state. (App. 00121).

Next the level of scrutiny must be considered. While these classes of motor vehicles are not suspect (assuming, *arguendo*, the legitimate purpose of safety), given the fundamental right at issue (the right to travel), heightened scrutiny must apply. *King v. State*, 818 N.W.2d 1, 25-26 (Iowa 2012). The City must therefore demonstrate that the Ordinance is "narrowly tailored to a compelling state interest." *Wright v. Iowa Dep't of Corr.*, 747 N.W.2d 213, 216 (Iowa 2008). The City cannot do so. The City is not entitled to any deference because it was the City and Gatso, and not the City Council, who made the determination as to what classes of persons to burden, and appears to have based that determination on a financial decision as to which equipment to deploy to calculate vehicular speed. *Cf. Gallagher v. City of Clayton*, 699 F.3d 1013, 1020 (8th Cir. 2012) (holding that "*a legislative choice* is not subject to courtroom fact-finding and may be based on rational speculation."). There was no "legislative choice" in this situation.

[21] The Court acknowledged that consideration of under inclusiveness is generally reserved for strict scrutiny, but still struck down the economic legislation at issue in *Fitzgerald* pursuant to the rational basis test where the "classification involve[d] extreme degrees of overinclusion and under inclusion in relation to any particular goal, [as] it cannot be said to reasonably further that goal." *Id.* at 10.

Moreover, as described above, even if a fundamental interest were not at stake, the IDOT has determined that the location of the cameras is too distant from the S-curves. (App. 00095). Therefore, the classifications among vehicle owners cannot even survive rational basis scrutiny. The district court erred in failing to consider the purposes of the Ordinance in analyzing Ms. Leaf's equal protection claims, and in finding that the Equal Protection Clause was not violated. (App. 00163). The decision should be reversed.

VI. PRIVILEGES AND IMMUNITIES ARE VIOLATED BY THE ORDINANCE'S INFRINGEMENT UPON FUNDAMENTAL RIGHTS

A. Standard of Review

De novo review is applied to constitutional claims. *Homan*, 812 N.W.2d at 629.

B. Vehicle Owners are Treated Differently Without any Rational Basis

The Iowa Constitution requires that the "general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." IOWA CONST., Art. I § 6. The Iowa Supreme Court "test[s] privileges and immunities challenges by the traditional equal protection analysis." *Utilicorp United v. State Utils. Bd., Utils. Div., DOC*, 570 N.W.2d 451, 455 (Iowa 1997). Classifying citizens must not be done arbitrarily. *Id.* (citation omitted). For the same reasons that the Ordinance violates equal protection described above (classifying vehicle owners arbitrarily

with no relation to goal of safety), the Privileges and Immunities Clause is violated. Moreover, the fundamental right to interstate travel is violated when the unfamiliar motorists are more likely subject to citation from the speed trap.

Ms. Leaf asserts, further, as noted above, that the Ordinance violates a state-based constitutional right to *intrastate* travel, a right grounded in Iowa's privileges and immunities clause, which predates that of the U.S. Constitution. *See King*, 818 N.W.2d at 65 (Appel, J., dissenting) (noting the different interpretation the Iowa Supreme Court has given to its privileges and immunities clause as compared to the U.S. Supreme Court). A bright legal arc connects some of the nation's foundational constitutional documents involving the right to travel to the Iowa Constitution. Article IV of the Articles of Confederation expressly recognized and protected the right to travel, stating, "…the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively." Articles of Confederation of 1781, art. IV, para.1. Further, as Justice O'Connor has opined, that provision was incorporated by implication in the Privileges and Immunities Clause when the Constitution replaced the Articles of Confederation. *Zobel v. Williams*, 457 U.S. 55, 79-80 (1982) (O'Connor, J., concurring) (explaining that the drafters of the Constitution's Article IV omitted the Articles of Confederation's express guaranty to interstate

travel because the provision was redundant).

Ms. Leaf avers that, even if not yet expressly recognized by Iowa Supreme Court precedent, in fact, from its earliest days, Iowans have implicitly enjoyed a legally-protected right to intrastate travel, a right to be unfettered by unreasonable interference by state legislation or municipal ordinances. Ms. Leaf urges the Court expressly to recognize that that right is protected by the Privileges and Immunities Clause of the Iowa Constitution. Several states in the Upper Midwest, a number of them sharing a common legal heritage dating back to the Northwest Ordinance—Michigan, Minnesota, Ohio, Wisconsin--have affirmed a constitutionally-protected right of intrastate travel. *See Pencak v. Concealed Weapon Licensing Bd*, 872 F. Supp. 410, 414 (E.D. Mich. 1994) ("The right to intrastate travel is a basic freedom under the Michigan Constitution, and the analysis of government burdens on intrastate travel under the Michigan Constitution is identical to the analysis applied to government burdens on interstate travel under the United States Constitution."); *State v. Cuypers*, 559 N.W. 2d 435, 437 (Minn. Ct. App. 1997) ("Minnesota also recognizes the right to intrastate travel"); *State v. Burnett*, 755 N.E.2d 857, 865 (Ohio 2001) ([T]he right to travel within a state is no less fundamental than the right to travel between the states."); *Brandmiller v. Arreola*, 544 N.W.2d 894, 899 (Wis. 1996) ("[T]he right to travel intrastate is fundamental among the liberties preserved by the Wisconsin Constitution. This right to travel includes the right to move

freely about one's neighborhood."). Although North Dakota was not a part of the Northwest Territory, but, rather, shares Iowa's Louisiana Purchase heritage, its Supreme Court, too, recognizes a constitutionally-protected right to intrastate travel. *See State v. Holbach*, 763 N.W.2d 761, 765 (N.D. 2009) ("An individual has a constitutional right to intrastate travel, however that right is not absolute and may be restricted.").[22]

As a recognized fundamental right, Ms. Leaf believes that efforts by the City to prosecute her under the City's Ordinance for an alleged event occurring while she was on I-380 must be subjected to heightened levels of scrutiny, and that judicial determination must be made as to whether the City's ability to achieve its ostensible compelling interest can be achieved by more

[22] A number of states located in the far West have also recognized the fundamental right to intrastate travel, grounded in state constitutional law provisions: Alaska, California, Montana, Wyoming, among others. *See*, *e.g., Treacy v. Municipality of Anchorage*, 91 P. 3d 252, 264-65 (Alaska 2004) ("There is no question that the rights at issue in this case—the rights to move about, to privacy, to speak—are fundamental….Accordingly, we assume that the right to intrastate travel is fundamental, but we do not address its scope."); *In re White,* 158 Cal. Rptr. 562, 566-67 (Ct. App. 1979) ("We conclude that the right to intrastate travel (which includes intra-municipal travel) is a basic human right protected by the United States and California Constitutions"); and, *In re Marriage of Guffin*, 209 P.3d 225, 227-28 (Mont. 2009) ("It is difficult to conceive that the right to travel protected by the United States Constitution does not include a right to freely travel within each of the sates….We hold, therefore, that the right to travel guaranteed by the United States Constitution includes the right to travel within Montana."); *Watt v. Watt*, 971 P.2d 608, 615 (Wyo. 1999) ("The right to travel freely throughout the state is a necessary and fundamental aspect of our emancipated society, and it is retained by the citizens.").

narrowly tailoring its ATE Ordinance. This is particularly the case when the IDOT has determined that there is no legitimate interest/rational basis (let alone compelling interest) to have the cameras located at I-380 Southbound at J Avenue.

The district court erred in failing to recognize the classifications of vehicle owners in the Ordinance as implemented by the City and Gatso and its infringement upon the privileges and immunities of the citizens of Iowa and those passing through Iowa. The decision should be reversed.

CONCLUSION

For one or more of these reasons, Ms. Leaf respectfully requests that the district court's decision be reversed on its determination of liability.

Dated this 8th day of August, 2016.

REQUEST FOR ORAL ARGUMENT

Ms. Leaf respectfully requests oral argument.

CERTIFICATE OF COST

Ms. Leaf will submit a Certificate of Cost with submission of the final Briefs.

Respectfully submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on August 8, 2016, I electronically filed the foregoing Final Brief of Appellant with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Pursuant to Rule 16.317(1)(a), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because: this brief contains 13,820 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 1997-2004 in size 14 Garamond.

Dated this 8th day of August, 2016.

Respectfully submitted,

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