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

AMENDED FINAL BRIEF OF PLAINTIFF-APPELLEE

Patricia G. Kropf
City of Cedar Rapids
City Attorney's Office
101 First Street SE
Cedar Rapids, IA 52401
Telephone: 319-286-5025
Fax: 319-286-5135
Email: t.kropf@cedar-rapids.org

ATTORNEY FOR PLAINTIFF-APPELLEE

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ROUTING STATEMENT

This case is appropriate for retention by the Iowa Supreme Court in that it at least arguably meets the criteria for retention contained in subsection 2(a) and subsection 2(c) of Iowa R. of App. P. 6.1101. However, Plaintiff-Appellee City of Cedar Rapids (the "City") disagrees with Defendant-Appellant Marla Leaf ("Ms. Leaf") that this case satisfies any of the other criteria for retention by the Iowa Supreme Court contained in that Rule. The City believes this case primarily involves the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This case commenced as a municipal infraction filed by the City in small claims court on March 31, 2015 for a violation of Cedar Rapids Municipal Code Section 61.138 ("Section 61.138"), the City's automated traffic enforcement ("ATE") ordinance. (App. pp. 00001-00002). The municipal infraction alleged that Ms. Leaf violated Section 61.138 by being the registered owner of a vehicle that exceeded the posted speed limit on Interstate 380 Southbound at J Avenue within the city limits of Cedar Rapids on February 5, 2015. (App. pp. 00001-00002). The only relief requested in the municipal infraction was that Ms. Leaf be ordered to pay a $75 civil penalty, plus court costs. (App. pp. 00001-00002).

After being duly served with the municipal infraction, Ms. Leaf, through her attorney James Larew ("Mr. Larew"), filed a denial of the allegations of the municipal infraction and the matter was ultimately set to be tried on May 26, 2015 at 1:00 p.m. (Appearance and Answer filed April 8, 2015 & Order Resetting Trial filed April 10, 2015). The morning of trial, Magistrate Marty Hagge ("Magistrate Hagge"), the magistrate scheduled to hear the case, granted Ms. Leaf permission to have the trial reported by a certified court reporter at her own expense and it was so recorded. (Order filed May 26, 2015).

Minutes before the trial was set to commence, Ms. Leaf filed and served by hand-delivery to the undersigned a Motion to Dismiss, which alleged as grounds for dismissal that the City was using its ATE system in a manner that violated her due process and equal protection rights and that the administrative process used by the City to review violations of Section 61.138 was without lawful basis. (App. pp. 00112-00113). The City informed Magistrate Hagge that it had only just received the Motion to Dismiss and then presented brief oral argument in resistance to the Motion to Dismiss based on the limited scanning of that Motion the City was able to do prior to trial. (App. pp. 00006-00007). Magistrate Hagge noted that he had also just received the Motion to Dismiss, and had not had an opportunity

to review it either, and gave the City a week to file a response to it. (App. p. 00007). Mr. Larew then requested permission to orally address the Motion to Dismiss and Magistrate Hagge granted his request. (App. pp. 00007-00008).

After the completion of Mr. Larew's arguments, Magistrate Hagge indicated he would address the Motion to Dismiss once he received the City's response, an issue relating to a subpoena served by Mr. Larew was addressed and then the case proceeded to trial. (App. pp. 00013-00016). Following the trial, the parties did not file post-trial briefs, but the City did file a Resistance to Ms. Leaf's Motion to Dismiss on June 2, 2015. (App. pp. 00114-00119).

On August 4, 2015, Magistrate Hagge entered an Order denying Ms. Leaf's Motion to Dismiss and finding that the City had met its burden to prove that Ms. Leaf violated Section 61.138 as alleged in the municipal infraction. (App. pp. 00146-00147). Magistrate Hagge further found that the City's ATE system does not violate Ms. Leaf's right to due process or equal protection and is not an unlawful delegation. (App. pp. 00147-00148).

Ms. Leaf timely appealed Magistrate Hagge's ruling to the district court and the parties filed written briefs pursuant to the briefing schedule set by the district court. (Notice of Appeal filed August 11, 2015; Order Setting

Briefing Schedule filed November 19, 2015; Defendant/Appellant's Brief to the Iowa District Court filed December 8, 2015; Plaintiff/Appellee City of Cedar Rapids' Brief on Appeal filed December 29, 2015; Defendant/Appellant's Reply Brief on Appeal filed January 11, 2016). In her brief on appeal, Ms. Leaf argued that: the City failed to meet its burden of proof, Section 61.138 is unconstitutional as a violation of Ms. Leaf's procedural and substantive due process rights and her right to equal protection under the Iowa Constitution, Section 61.138 constitutes an unlawful attempt to grant jurisdiction to an administrative board and is preempted by Iowa law, the City unlawfully delegated its police power and the City is unjustly enriched by the fines collected through the ATE program. (Defendant/Appellant's Brief to the Iowa District Court filed December 8, 2015, pp. 15-32)

On February 9, 2016, the Honorable Patrick R. Grady ("Judge Grady") entered the ruling that is the subject of this appeal, affirming Magistrate Hagge's decision. (App. pp. 00154-00165). In so affirming, Judge Grady found that Ms. Leaf's unjust enrichment argument had not been raised at trial and was, therefore, not before the Court on appeal, and rejected on the merits the remainder of Ms. Leaf's arguments contained in her brief on appeal. (App. pp. 00154-00165).

STATEMENT OF THE FACTS

As part of the ATE system authorized by Section 61.138, an individual speed radar and camera device (referred to collectively as a "Safety Camera") is mounted on the freeway truss above each lane of traffic on Interstate 380 Southbound at J Avenue (the "J Avenue Location"), as well as at other locations within the corporate limits of the City. (App. pp. 00057 & 00129). This system had been in place for roughly 6 years. (App. p. 00057).

On February 5, 2015, at 1:59 p.m., a Ford Mustang with license plate number 190WQR (the "Mustang") was captured by the Safety Camera mounted above lane 2 of the J Avenue location traveling 68 miles per hour at that location. (App. pp. 00046-00047 & 000120). The speed limit at the J Avenue location is 55 miles per hour and that speed limit is posted, as are signs warning of the presence of the Safety Cameras. (App. pp. 00047-00048). On February 5, 2015, Ms. Leaf was not only the owner of the Mustang, but she was also the driver of the Mustang at 1:59 p.m. on that day when it was captured by the Safety Camera at the J Avenue Location. (App. pp. 00017-00019). Prior to February 5, 2015, Ms. Leaf was aware of the Safety Cameras and their location on Interstate 380. (App. p. 00023).

Officer Harvey Caldwell ("Officer Caldwell") of the Cedar Rapids Police Department reviewed the information generated by the Safety Camera in relation to the aforementioned event with the Mustang and approved issuance of a Notice of Violation (sometimes referred to as an "Automated Traffic Citation") to Ms. Leaf. (App. p. 00046). Ms. Leaf received a copy of the Notice of Violation and called the phone number provided on that Notice to contest the violation at an administrative hearing. (App. pp. 00018, 00029-00030 & 00121). That administrative hearing was held via phone, with Ms. Leaf's consent, and Ms. Leaf was given the opportunity to present any defenses she had to the violation at that time. (App. pp. 00020 & 00066-00067). The hearing officer then found Ms. Leaf liable for the $75 civil fine for the violation of Section 61.138. (App. p. 00124).

After receiving the decision of the hearing officer, Ms. Leaf exercised her right under Section 61.138(e) to contest the Notice of Violation she received by submitting a form to the City requesting that it file a municipal infraction against her in lieu of the Automated Traffic Citation. (App. pp. 00022 & 00126). The City then promptly filed the municipal infraction that commenced this case. (App. pp. 00001-00002).

ARGUMENT

The Argument section of Ms. Leaf's brief to this Court contains six different divisions. (Proof Brief of Defendant-Appellant (Amended)). The City's argument corresponds to the issues argued in those six divisions as much as possible. None of the six divisions of the Argument section of Ms. Leaf's brief to this Court contain the statement addressing how the issue was preserved for appellate review that is required by Iowa R. of App. P. 6.903(2)(g)(1). Therefore, the City is unable to comply at this time with the portion of Iowa R. of App. P. 6.903(3) that requires it to indicate at the beginning of the City's argument in each division whether it agrees with Ms. Leaf's statements on error preservation. At such time as Ms. Leaf provides the statement as to error preservation that is required by Iowa R. of App. P. 6.903(2)(g)(1), the City will promptly provide the statement required of it by Iowa R. of App. P. 6.903(3).

Ms. Leaf raises several constitutional challenges to Section 61.138. As to each of those challenges, Ms. Leaf bears the burden of overcoming the strong presumption of constitutionality afforded municipal ordinances under Iowa law and she must "negate every reasonable basis upon which the enactment might be upheld. *Iowa City v. Nolan*, 239 N.W.2d 102, 103 (Iowa 1976)(citing *Keasling v. Thompson*, 217 N.W.2d 687, 689 (Iowa

1974)). *See also Spurbeck v. Stratton*, 106 N.W.2d 660, 663 (Iowa 1960)(stating "…he who attacks the constitutionality [of a law] must prove invalidity beyond a reasonable doubt; the fact the law may work hardship does not render it unconstitutional…"). If more than one construction or interpretation of a given ordinance is possible, and one of them renders the ordinance constitutional, the Court will adopt the interpretation by which constitutionality may be upheld. *Nolan*, 239 N.W.2d at 103.

I. The District Court Did Not Err in Holding that the City Had Proven the Violation by Clear, Satisfactory and Convincing Evidence

A. Scope and Standard of Appellate Review

The City agrees with Ms. Leaf that the district court's decision as to whether the City met its burden of proof was a decision at law and, therefore, the scope and standard of review on appeal of that issue is for correction of errors at law. Iowa R. App. P. 6.907.

B. The City Met its Burden to Prove that Ms. Leaf Violated Section 61.138

Ms. Leaf concedes that, in order to prove she violated the particular subsection of Section 61.138 at issue in this matter, subsection (c)(2), the City just had to prove (1) that she was the owner of the vehicle in question and (2) that her vehicle was traveling in excess of the posted speed limit.

(Defendant/Appellant's Brief to the Iowa District Court filed December 8, 2015, pp. 15-16). As to the first element, Ms. Leaf admits she was the owner of the vehicle in question on the date in question. (App. pp. 00017-00019). Therefore, the only element of the City's case in chief that is in dispute is whether the City proved by "clear, satisfactory and convincing evidence" that Ms. Leaf's vehicle was traveling in excess of the posted speed limit. *See* Iowa Code 364.22(6)(b) (2015).

Both parties agree that the posted speed limit at the location in question is 55 miles per hour. (App. pp. 00023 & 00047-00048). As to the issue of whether Ms. Leaf's vehicle exceeded the posted speed limit, the Safety Camera at the J Avenue Location captured Ms. Leaf's vehicle traveling 68 miles per hour, 13 miles in excess of the posted speed limit. (App. pp. 00046-00048 & 00120). Ms. Leaf contests that this was an accurate determination of her speed at the time in question.

The radar contained within the Speed Camera at the J Avenue Location is calibrated annually by Gatso USA, Inc. ("Gatso"), the owner of the ATE equipment. (App. pp. 00058, 00060-00061 & 00129). At the most recent of these annual calibrations by Gatso prior to the date of Ms. Leaf's violation of Section 61.138, the radar was working properly. (App. pp. 00062-00063 & 00132). The Speed Camera also performs a self-test daily

to ensure the system is operating properly. (App. p. 00129). Every minute, the radar validates the hardware and software parameters and settings and, if one of the verifications fails, the output of the radar is set to zero and no signal is processed until the verification result is correct. (App. p. 00129). The radar is stationary and each lane of travel at the J Avenue Location has its own radar. (App. p. 00050).

Ms. Leaf alleges that the only evidence the City produced to show the radar in question was working properly at the time of her violation of Section 61.138 was the report from the annual calibration by Gatso, which was admitted into evidence at trial, subject to Ms. Leaf's hearsay objection, as Exhibit 6. This allegation by Ms. Leaf is simply not true. At trial, Officer Mark Asplund ("Officer Asplund") testified, without any objection from Ms. Leaf, that the ATE radars are calibrated, and preventative maintenance is performed, on an annual basis by Gatso and if the radar is not working properly, it shuts itself off and no violations are sent to the Cedar Rapids Police Department ("CRPD") for review until the issue is resolved. (App. pp. 00060-00061 & 00063). Without objection from Ms. Leaf, Officer Asplund also testified that he has reviewed all of the calibration records provided by Gatso for the Safety Cameras on Interstate 380 since the inception of the City's ATE program and he has never seen a calibration

sheet that showed the radar was performing outside of the permissible limits (i.e. outside the permissible margin of error). (App. p. 00061). Officer Asplund further testified, again without objection from Ms. Leaf, that CRPD tests the Safety Cameras itself on a quarterly basis using a GPS box that is mounted in the back window of a squad car as it speeds under the radar. (App. p. 00064). Moreover, Officer Asplund also testified in response to a question from Ms. Leaf's Counsel that he has actually seen Gatso performing the annual calibrations while he was driving on Interstate 380. (App. p. 00071).

Even if the documentary evidence relating to the accuracy of the radar, namely Trial Exhibits 5 and 6, was the only evidence the City produced to show the accuracy of the radar, it would not be an error for the Court to consider that evidence. Officer Asplund has worked with the ATE program on a constant and regular basis since its inception and has received training from Gatso relating to the program. (App. pp. 00057-00059). He testified that, as to the record of Gatso's annual calibrations, the Gatso technician goes up to the freeway truss and hangs a device in front of the radar to simulate different speeds, records those speeds and then gives that record to the City. (App. p. 00061). The calibrations are done on a regular basis as part of Gatso's business and, as testified to by Officer Asplund, the

calibration records are made as the calibrations are being performed. These records are, therefore, business records that fall within the business records exception to the hearsay rule. Iowa R. Evid. 5.803(6).

As to Statement of Technology that was admitted as Trial Exhibit 5, Officer Asplund testified this is a document that was provided to the City by Gatso to explain in general how Gatso's ATE equipment works and it comports with his understanding as to how that equipment functions. (App. pp. 00058-00059). Therefore, the Statement of Technology qualifies as a business record as well.

Even if Trial Exhibits 5 and 6 do not qualify for the business records exception to the hearsay rule, the Court can still admit and consider them so long as it finds them reliable. Municipal infractions are tried in the same manner as a small claim. Iowa Code 364.22(6)(a) (2015). In the context of small claims, this Court has stated that "[w]hen dealing with hearsay, the judge should not use the technical requirements of the rules of evidence to exclude evidence that the judge finds reliable." *GE Money Bank v. Morales*, 773 N.W.2d 533, 539 (Iowa 2009). Hearsay evidence is reliable if "the evidence is the kind of evidence that reasonably prudent persons are accustomed to rely on for the conduct of their serious affairs." *Morales*, 773 N.W.2d at 539.

Trial Exhibits 5 and 6 are reliable evidence under the aforementioned *Morales* standard. The records a company creates while performing regular tests of its equipment, such as the record shown in Trial Exhibit 6, is certainly something reasonably prudent persons would rely upon for the conduct of their serious affairs. Moreover, a summary document explaining complex technology that is produced by the owner of that technology in order to assist the reader, such as the summary reflected on Trial Exhibit 5, also falls into that category of documents upon which reasonably prudent persons would rely. Therefore, both Trial Exhibit 5 and Trial Exhibit 6 are admissible under the *Morales* standard.

Ms. Leaf also attacks the City's evidence relating to the accuracy of the radar at issue by claiming there was "inconsistent testimony with respect to Gatso's equipment functioning…" (Proof Brief of Defendant-Appellant (Amended), p. 17). There was no such inconsistent testimony. In support of her allegation that there was inconsistent testimony, Ms. Leaf cites a portion of the transcript of the testimony of Officer Caldwell, in which he testified that a grouping of photos where the license plate could not be read would indicate there might be something wrong with the *camera*. (App. p. 00055). The camera and the radar are not the same thing. (App. p. 00129) (stating "[a]n individual radar device, camera, and flash unit are installed over each

lane of traffic monitored."). Therefore, Officer Caldwell's testimony is in no way inconsistent with Officer Asplund's testimony, which is cited by Ms. Leaf, that the *radar* shuts off if it is not functioning properly. (App. p. 00060).

Ms. Leaf also attacks the City's evidence relating to the accuracy of the radar at issue based on the angle of the radar. In doing so, she overstates the testimony that was provided by Officer Asplund on this point by alleging that he indicated the angle "would significantly affect the calculation of speed." (Proof Brief of Defendant-Appellant (Amended), p. 14). Officer Asplund provided no such testimony. Officer Asplund did testify that, if the angle was off by too much (too far or too narrow), it would affect the reading of the speed. (App. p. 00072). However, he did not testify that it would be "significantly" effected and he also testified that, based on his training and experience, he did not believe the sort of angle used by the radar at issue would cause the radar to be off by as much as 12 miles per hour. (App. pp. 00077-00078). Ms. Leaf was traveling 13 miles per hour over the speed limit when she was captured by the radar at issue in this matter and, therefore, based on Officer Asplund's testimony, the radar angle is of little relevance to the issue of whether or not she was speeding.

Despite the evidence of speeding produced by the City, Ms. Leaf claims she was not speeding. However, her trial testimony on this point lacked certainty and specificity, making it less than 100% credible. She twice testified that she was "probably" traveling below the speed limit and, even then, the speed limit she provided was only a range. (App. pp. 00028 & 00037). Ms. Leaf also admitted that she did not have her cruise control set at the time in question and she was focused on the road and the other drivers around her at the time. (App. p. 00038). She also admitted that she has never requested her speedometer be checked for accuracy. (App. p. 00039). Based on Ms. Leaf's testimony, both Magistrate Hagge and Judge Grady could have easily concluded that, even if she was not intentionally speeding, Ms. Leaf could have been exceeding the speed limit at the time in question without realizing she was doing it.

The only witness called to corroborate Ms. Leaf's claim that she was not speeding on the date and time in question was her friend and domestic partner, Billy Heeren ("Mr. Heeren"), who she appears to have known for at least 38 years. (App. pp. 00025 & 00082-00083). Mr. Heeren was present in the courtroom during the trial of this matter and heard the testimony of all of the other witnesses, including Ms. Leaf, prior to testifying himself. (App. p. 00087). Moreover, he admitted he was seated in the passenger seat of the

vehicle at the time of the alleged violation and could not see the speedometer from where he was sitting. (App. p. 00085). In light of all of the foregoing, Mr. Heeren's testimony that Ms. Leaf was not speeding is of questionable value and credibility.

II. The District Court Did Not Err in Holding that the Ordinance is Not an Unlawful Grant of Jurisdiction to an Administrative Board or Hearing Officer

A. Scope and Standard of Appellate Review

The City agrees with Ms. Leaf the scope and standard of review for the arguments in Division II of her brief to this Court is for correction of errors at law. Iowa R. App. P. 6.907.

B. Section 61.138 is Not Preempted by Iowa Code Section 364.22 or 602.6101

The Iowa Constitution grants cities authority to provide for administrative appeal processes, such as the one found in Section 61.138, in Article 3, §38A, entitled Municipal Home Rule, which provides:

> Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.
>
> The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not part of the law of this state.

Ia. Const. art. 3, §38A. "A local ordinance is *not* inconsistent with a state law unless it is *irreconcilable* with the state law." *BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes*, 646 N.W.2d 857, 859 (Iowa Ct. App. 2002) (emphasis in original).

The Iowa Code also gives cities the authority to create administrative appeal processes such as the one found in Section 61.138. Iowa Code §364.1 concerns the scope of cities' powers and duties. Its first sentence provides:

> A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

Iowa Code §364.1 (2015).

Cities' home rule authority to provide for administrative remedies cannot seriously be disputed. Examples of this authority are easily found in various municipal building, housing, zoning, fire and nuisance abatement codes that provide for administrative remedies, in addition to judicial review.

Section 61.138 is not inconsistent, and is certainly not irreconcilable, with State law because it allows vehicle owners to contest the violation

either in an administrative hearing, in the Iowa District Court or both. Cedar Rapids Municipal Code §61.138(e). Nowhere in Section 61.138 does it state that vehicle owners are *required* to go through the administrative hearing process prior to exercising their right to challenge the citation through the municipal infraction process provided for in Section 61.138(e)(2). Nor has the City ever taken the position that the administrative hearing is so required. (App. pp. 00065-00066). The administrative hearing is merely one of several options available to vehicle owners who wish to challenge their citations. A vehicle owner may contest the citation through an administrative appeal, a municipal infraction or both. The administrative appeal option in no way divests the Court of jurisdiction to hear this matter.

Ms. Leaf's reliance on Iowa Code Section 602.6101 is misplaced. That provision is silent on the issue of whether political subdivisions are permitted to establish administrative bodies. As set out previously though, home rule provisions expressly permit such local bodies because they are not inconsistent with the jurisdiction or authority of the unified trial court provided in Iowa Code Section 602.6101. The administrative hearing process "amounts to, at most, concurrent jurisdiction over alleged municipal infractions." *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 849 (N.D. Iowa 2015)(pending appeal).

Ms. Leaf's reliance on Iowa Code Section 364.22 is also misplaced. Section 364.22 merely provides one means by which a city can enforce its ordinances. *See* Iowa Code § 364.22(2)(2015)(providing that a "city by ordinance *may* provide that a violation of an ordinance is a municipal infraction." (emphasis added)). The municipal infraction process is not the exclusive means by which a city can enforce its ordinances. For example, the City can also use criminal citations to enforce its ordinances and often does so. *See* Cedar Rapids Municipal Code §1.08. Section 61.138 is not inconsistent or irreconcilable with Iowa Code Section 364.22. *See Davenport v. Seymour*, 755 N.W.2d 533, 541 (Iowa 2008)(stating that "[i]n order to be 'irreconcilable,' the conflict must be unresolvable short of choosing one enactment over the other."); *City of Sioux City v. Jacobsma,* 862 N.W.2d 335, 353-54 (Iowa 2015). Section 61.138 merely provides an administrative option that can be exercised in addition to, or instead of, the municipal infraction process, if an individual wishes to challenge a Notice of Violation they receive from the City under the ATE program.

C. Section 61.138 is Not Preempted by Iowa Administrative Code Section 761-144.6

Ms. Leaf's brief to this Court is the first time she has raised the argument that Section 61.138 is somehow preempted by Iowa Administrative Code Section 761-144.6 ("Rule 761-144.6"). This argument

was not before either Magistrate Hagge or Judge Grady at the time of their rulings in this matter. Therefore, this argument should be given no consideration by this Court.

Even if this Court decides it is appropriate to consider this argument on review, this argument fails for multiple reasons. First and foremost, this argument fails because Rule 761-144.6 is not a statute that was passed by the legislature; it is merely an administrative rule that was passed by the Iowa Department of Transportation (the "IDOT"), under circumstances that the City has alleged in other litigation, which is still ongoing, were improper and outside of the IDOT's authority. *See* Linn County District Court case number CVCV083255. Ms. Leaf cites no authority that supports any argument that a local ordinance can be preempted by a State administrative agency rule such as Rule 761-144.6. To the contrary, as stated previously, Municipal Home Rule explicitly grants cities the authority to pass local laws such as Section 61.138, so long as those laws are "not inconsistent with the laws *of the general assembly*[.]" Iowa Constitution Art. 3, §38A. *See also* Iowa Code §364.1.

Moreover, Section 61.138 does not specify where the ATE equipment will be located or how it will be calibrated and, therefore, on its face, it is not in any way inconsistent with Rule 761-144.6. As to subsection 4 of Rule

761-144.6 (the "Calibration Rule"), the evidence at trial was that the City is, *at the least*, in substantial compliance with the Calibration Rule because the ATE equipment is tested quarterly by the CRPD. (App. p. 00064). The IDOT has not provided a definition as to what constitutes "calibration" for purposes of the Calibration Rule and it is merely a guess on Ms. Leaf's part to say the City's actions do not constitute "calibration" for purposes of the Calibration Rule.

As to the requirement in subsection 1 of Rule 761-144.6 that the ATE equipment not be placed within the first 1,000 feet of a lower speed limit (the "1,000 Foot Rule"), no evidence was admitted at trial to show that Section 61.138, or the manner in which it is being enforced, is not consistent with the 1,000 Foot Rule. In making her preemption argument in relation to the 1,000 Foot Rule, Ms. Leaf argues with alleged facts that were not properly made a part of the record at trial. The documents cited by Ms. Leaf in support of these facts, Exhibits B and C, were at not admitted into evidence at trial but, rather, were merely attached to the Motion to Dismiss Ms. Leaf filed on the day of trial. (Defendant's Motion to Dismiss filed May 26, 2015). Therefore, none of the information contained therein can be considered facts that were properly proven in this matter.

III. The District Court was Correct in Holding that Section 61.138 is Not an Unconstitutional Delegation of the City's Police Power to a Private Company

A. Scope and Standard of Appellate Review

The City agrees with Ms. Leaf that constitutional claims are reviewed de novo.

B. The City Has Not Unlawfully Delegated its Police Power to Gatso

"As a general rule, 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 Cnty. Bd. of Health v. Warren Cnty. Bd. of Supervisors*, 654 N.W.2d 910, 913-14 (Iowa 2002). "It can, however, delegate its right to perform certain acts and duties necessary to transact and carry out its powers. These delegable acts typically involve functions that require little judgment or discretion." *Warren Cnty*, 654 N.W.2d at 914.

Both Officer Caldwell and Officer Asplund testified at trial that CRPD officers are the *only* parties who approve issuance of Notices of Violation to vehicle owners pursuant to Section 61.138. (App. pp. 00048-00049 & 00058). Moreover, Section 61.138(a) explicitly provides that "[t]he police department will determine which vehicle owners are in

violation of the city's traffic control ordinances and are to receive a notice of violation for the offense." Gatso does not decide whether to issue a Notice of Violation to the vehicle owner, nor does it have authority to do so under Section 61.138. (App. p. 00058). Gatso's duties are administrative and require little judgment or discretion. (App. pp. 00058 & 00127-00131). Therefore, there is no unlawful delegation of police power by the City to Gatso. *See Jacobsma*, 862 N.W.2d at 337 (upholding Sioux City's ATE ordinance, which uses a similar system to the City's, and stating "[w]hile the ATE ordinance provides that the automated system shall be operated by a private contractor, the police department receives the digital images and determines which 'vehicle owners are in violation of the city's speed enforcement ordinance and are to receive a notice of violation for the offense.'").

C. The City Has Not "Usurped" Judicial Powers and Unconstitutionally Delegated Them to the Administrative Hearing Officer

Ms. Leaf's brief to this Court is the first time she has raised the argument that the City has somehow unconstitutionally delegated judicial powers to the administrative hearing officer. This argument was not before either Magistrate Hagge or Judge Grady at the time of their ruling in this

matter. Therefore, this argument should be given no consideration by this Court.

Even if this Court deems it appropriate to consider this argument for the first time on appeal, this argument is without merit. As stated previously, offering parties an administrative appeal option, in addition to the option to go to court, in no way divests the Court of jurisdiction to hear this matter.

IV. The District Court was Correct in Holding that the Ordinance Does Not Violate the Due Process Clause

A. Scope and Standard of Appellate Review

The City agrees with Ms. Leaf that constitutional claims are reviewed de novo.

B. There was No Failure to Follow a Statutorily-Required Process in this Matter

For the first time in her brief to this Court, Ms. Leaf argues that a statutorily-required process provided for in Iowa Code Section 364.22 has not been followed in this case and this failure resulted in a due process violation. Even if the Court determines it is appropriate to consider this argument raised for the first time on appeal, which the City argues it is not, this argument fails. Ms. Leaf is correct that, *once a municipal infraction is filed*, the Iowa Code requires that municipal infraction be tried before a

magistrate or judge as a small claim. Iowa Code §364.22(6)(a) (2015). This is exactly what occurred in this matter and there was no failure to follow the statutory procedure on the part of the City. The City filed its municipal infraction on March 31, 2015, and it proceeded directly to small claims court on May 26, 2015.

In arguing that the statutorily-required process for municipal infractions was not followed, Ms. Leaf appears to equate the Notice of Violation (i.e. the Automated Traffic Citation) she received with a municipal infraction, but these items are not the same thing. *See* Trial Exhibit 3 (App. p. 00124)(informing Ms. Leaf that she has "the option to request that in lieu of the Automated Traffic Citation, a municipal infraction be issued and filed in the Small Claims Division of the Iowa District Court in Linn County…"); Trial Exhibit 4 (App. p. 00126)(titled "R[e]quest for Municipal Infraction *in Lieu of* Citation by Administrative Proceedings." (emphasis added)). *Cf. Seymour*, 755 N.W.2d at 533. Section 364.22 leaves the City free to attempt to enforce its ordinances through processes other than the municipal infraction process. *See* Iowa Code §364.22(2)(emphasis added)("[a] city by ordinance *may* provide that a violation of an ordinance is a municipal infraction."). The issuance of an Automated Traffic Citation, with the accompanying administrative hearing process, is one such process. In light

of the fact the Automated Traffic Citation and administrative hearing process occur before the municipal infraction is even filed, and may occur in lieu of the municipal infraction ever being filed, Iowa Code Section 364.22 ("Section 364.22") has no application to that process.

C. Ms. Leaf's Procedural Due Process Rights Were Not Violated in this Matter

"Procedural due process requires that before there can be a deprivation of a protected interest, there must be notice and opportunity to be heard in a proceeding that is 'adequate to safeguard the right for which the constitutional protection is invoked.'" *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 690-91 (Iowa 2002)(quoting *City of Cedar Rapids v. Mun. Fire & Police Ret. Sys. of Iowa*, 526 N.W.2d 284, 291 (Iowa 1995)). The Court employs a two-step analysis for procedural due process claims. First, the Court must determine whether a person has been deprived of a protected liberty or property interest. *Lewis v. Jaeger*, 818 N.W.2d 165, 181 (Iowa 2012). Next, the Court determines the process due for that interest. *Jaeger*, 818 N.W.2d at 181. In determining the process due, the Court balances the following competing interests:

> First, the private interest that will be affected by the official action; second, the risk of an 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, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976)).

i. The Private Interest at Stake is Not a Substantial One and Ms. Leaf Has Been Provided All the Process She is Due

There is no dispute that Ms. Leaf has a property interest in the $75.00 citation issued under the ATE system. *See Shavitz v. City of High Point*, 270 F.Supp.2d 702, 709 (M.D.N.C. 2003) (concluding a $50 fine resulting from an ATE system constitutes a legitimate property interest for purposes of due process). However, a $75.00 fine is not a particularly strong property interest. *Hughes*, 112 F. Supp. 3d at 846 ("A civil fine between $25 and $750, although certainly a property interest protected by the Due Process Clause, is not a particularly weighty property interest."). Ms. Leaf argues that there is also a property interest in the form of time, which is lost by the "wasted administrative 'hearing'." (Proof Brief of Defendant-Appellant (Amended), p. 35). Even assuming such an interest is a protected property interest for due process purposes, which the City does not concede, that interest is not at stake here in light of the fact the administrative hearing is

voluntary and can be bypassed upon request.[1] (App. pp. 00065-00066). Ms. Leaf also asserts, at least as best as the City can tell, that there is some sort of interest in not being subjected to "formal collection procedures" or "being reported to a credit agency." (Proof Brief of Defendant-Appellant (Amended), p. 35). Again, even assuming such an interest is a protected property interest for due process purposes, which the City does not concede, that interest is not at stake here because Ms. Leaf timely contested liability for the violation. The Notice of Violation in this matter makes clear that the vehicle owner may be subject to such action only after they fail to pay the civil fine or contest liability within 30 calendar days. (App. p. 00120). Therefore, the $75.00 property interest is the only interest at stake in this matter. Weighing the $75.00 property interest, the Court must determine what amount of process is due to Ms. Leaf and whether she has been afforded that due process.

It is undisputed that Ms. Leaf received the Notice of Violation that was admitted into evidence at trial as Exhibit 1 (the "Notice"). (App. p.

[1] Even if Ms. Leaf were required to participate in the administrative hearing process before proceeding to court, it does not follow that such a requirement would give rise to a due process violation. There are many circumstances where parties are required to exhaust administrative remedies before going to court and Ms. Leaf cannot seriously argue that all of those circumstances are unconstitutional as well.

00018). The Notice clearly provided Ms. Leaf not only with notice of the violation at issue, but also with notice of her right to contest the violation. (App. pp. 00120-00121). Furthermore, the Notice provided Ms. Leaf with a reference to the municipal code section at issue, Section 61.138, and an internet link which enabled her to obtain and review a complete copy of that section, including subsection (e) relating to her right to contest the violation by administrative hearing or municipal infraction if she wished to do so. (App. p. 00121). It is also undisputed that Ms. Leaf requested and received an administrative hearing and also requested, and has now received, a trial in the small claims division of the Iowa District Court for Linn County.[2] (App. pp. 00019-00022 & 00126). It is also clear from the small claims court file in this matter that Ms. Leaf was served with notice of the violation at issue in this matter by way of the municipal infraction that was personally served upon her on April 7, 2015. (Affidavit of Service filed April 14, 2015). Therefore, Ms. Leaf has been afforded procedural due process in multiple respects, not the least of which is the judicial review afforded by the municipal infraction proceeding and the subsequent appeals.

[2] It is worth noting that, even if Ms. Leaf had not exercised her right to contest the violation within the required time period, and the fine were imposed, she would be given notice and opportunity to be heard prior to the fine actually being involuntarily collected from her because the fine could not be collected against her wishes without first being reduced to a court judgment.

In *Lujan, et al. v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 197 (2001), the United States Supreme Court held that where ordinary judicial process is available, "that process is due process." In a municipal infraction, such as the one in this case, an alleged violator is afforded every opportunity under the Iowa Rules of Civil Procedure to be heard and to put the City to its burden of proof. It is precisely because of the availability of the municipal infraction that Section 61.138 cannot be found unconstitutional in whole or in part on procedural due process grounds. *Lujan,* 532 U.S. at 197.[3] Certainly, Ms. Leaf should not be entitled to more process than she has already received when only a $75 civil fine is at stake.

ii. There is No Serious Risk of Erroneous Deprivation of Ms. Leaf's Protected Interest Based on the Process Used by the City

Ms. Leaf appears to argue that the process used by the City somehow "dissuaded" her from exercising her rights, again citing the portion of the Notice of Violation that notifies the registered owner that *if* they don't pay the fine or contest liability within 30 days *then* collection procedures could

[3]Ms. Leaf's brief to this Court cites *Ward v. Monroeville*, 409 U.S. 57, 61 (1972), for the proposition that "[h]aving access to a proper tribunal at a later date does not rectify the defective due process of the original administrative hearing." (Proof Brief of Defendant-Appellant (Amended), p. 39). *Ward* involved defects in a criminal trial on the merits. Therefore, it is clearly distinguishable from the present case, where there is an alleged defect in the administrative hearing relating to a civil matter that was followed later by a trial on the merits.

commence. (App. p. 00120). Given that the Notice of Violation makes clear that collection procedures will only commence if Ms. Leaf does not timely contest liability, this provision should not have significantly dissuaded her from contesting liability and, as is clear from the record, it did not. Moreover, regardless of anything an employee of Gatso may or may not have said to Ms. Leaf, the documents provided to Ms. Leaf by the City made clear that she had the right to contest the violation. (App. pp. 00120-00121, 00124-00125 & 00138-00139). Furthermore, again, it is clear from the record in this matter, that Ms. Leaf was not significantly dissuaded from exercising her right to contest the violation by anything that may or may not have been said by a Gatso employee.

Ms. Leaf also asserts that a risk of deprivation of her protected interest arises from the fact calibration of the radar equipment "used to prosecute Vehicle Owners is not done by police officers, but by the equipment's owner, Gasto."[4] (Proof Brief of Defendant-Appellant (Amended), p. 35). However, this assertion ignores the fact that the CRPD also checks the accuracy of the radar equipment itself on a quarterly basis. (App. p. 00064). Even if this were not the case, it is perfectly reasonable to allow the owner of the equipment to maintain it and Ms. Leaf has presented

[4] Ms. Leaf's use of the word "prosecute" suggests that the citations at issue are criminal citations, which is not accurate.

no evidence to prove, or even suggest, Gatso has not done so in good faith and according to best business practices. Ms. Leaf's allegations that Gatso decides who should, or should not, be "prosecuted" and then the CRPD decides who should be liable at the administrative hearing are not supported by the record.[5] (App. pp. 00058 & 00074-00077)

Ms. Leaf also appears to take issue with the administrative hearing she requested and was provided in this matter. However, what the record in this matter shows is that there was nothing fatally erroneous about the administrative hearing process in which Ms. Leaf chose to participate. Ms. Leaf was notified of her hearing date and time via phone, but took issue with the date and time she was given because she wanted a hearing during "regular business hours." (App. pp. 00019-00020, 00029-00031 & 00066). Since the ATE administrative hearings are held in the evening, and Ms. Leaf

[5] Officer Asplund testified that there was one instance he could remember where a CRPD officer asked an administrative hearing officer to change their decision and that was only after Officer Asplund learned mitigating facts subsequent to the administrative hearing that were not presented to the hearing officer. After learning those mitigating facts, Officer Asplund went back to the hearing officer and asked the hearing officer to find the vehicle owner "not liable." (App. p. 00074). Officer Asplund further testified that the hearing officer agreed this reversal was appropriate. It is a far stretch to argue, as Ms. Leaf does, that it is the police who decide who is liable at the administrative hearings, particularly considering the fact that Officer Asplund also testified that he was aware of no circumstance where a hearing officer's finding was changed from "not liable" to "liable." (App. pp. 00076-00077).

had indicated she does not leave the house after 3 p.m., Ms. Leaf was offered a telephone hearing and she consented to the hearing being conducted in that fashion. (App. pp. 00020 & 00066-00067). Due process does not require the City to hold hearings during the day any more than it requires the Court to hold hearings at night. At the phone hearing, Ms. Leaf was given the opportunity to present her arguments to the volunteer hearing officer, who has agreed as part of his duties to render an unbiased decision, and the hearing officer found Ms. Leaf liable for the violation.[6] (App. pp. 00021, 00065-00067 & 00077). Ms. Leaf did not like the result of the administrative hearing, so she exercised her right to have this matter heard by a magistrate by requesting the City file this municipal infraction against her and the City promptly complied with that request. (App. p. 00126). Although it may not have been perfect, there is nothing fatally erroneous about the administrative hearing process followed as to Ms. Leaf in this matter.

[6] Ms. Leaf alleges that the administrative hearing officer is "typically a friend of…police officers." (Proof Brief of Defendant-Appellant (Amended), p. 10). This allegation is not supported by the record in this matter. Officer Asplund testified that one of the hearing officers is the son of a police officer and knows a few officers, but this does not necessarily mean he is "friends" with any of them and it is certainly a stretch to say the hearing officers, in general, are "typically friends" of the police officers.

Ms. Leaf also takes issue with the burden of proof that is applied by the administrative hearing officer because it is not the "clear and convincing" standard that is applied to municipal infractions. In doing so, she again fails to recognize that the Notice of Violation is not a municipal infraction and, therefore, Section 364.22 does not apply. Once the City filed the municipal infraction, it was held to the standard required by Section 364.22 and Magistrate Hagge's ruling made clear that "[a]t the trial, all evidence was heard anew by the court with no deference given to the findings from the administrative hearing." (App. p. 00147). Therefore, the bottom line is, regardless of any defect in the administrative hearing process, Ms. Leaf had a fair and impartial trial before a magistrate at which she had every opportunity to be heard. Therefore, there has been no violation of her procedural due process rights.

Ms. Leaf also complains that defenses other than those listed on the Notice of Violation have been successful in administrative hearings under Section 61.138. There is no constitutional right to have every conceivable defense to a claim listed out on a notice of violation. *Cf., Idris v. City of Chicago*, 552 F.3d 564, 567 (7th Cir. 2009) (rejecting plaintiffs' argument that they were limited to defenses listed in notice of violation); *O'Neill v. City of Philadelphia*, 711 A.2d 544, 547 (Pa. Commw. Ct. 1998) (city not

required to give notice that it was eliminating statute of limitations defense). Section 61.138 does not limit the defenses available to Ms. Leaf and she was free to raise any defense.

iii. The Government Interest in Not Adopting the Substitute Procedure Ms. Leaf Appears to Advocate For is Strong

Ms. Leaf appears to argue that "direct access to the court" is the substitute procedure that is necessary in order to make Section 61.138 constitutional on due process grounds. At the outset, the problem with this argument is that Section 61.138 *does* allow for direct access to the court. If a vehicle owner wishes to go directly to court by way of a municipal infraction, they can do so. *See* Cedar Rapids Municipal Code Section 61.138(e). (App. pp. 00065-00066).

To the extent Ms. Leaf is suggesting that the City should be required to file a municipal infraction against every vehicle owner whose vehicle is captured by the ATE equipment violating Section 61.138, which the City believes she may be, such a requirement is unreasonable. First, it would impose a huge financial burden on the City, as well as placing a substantial burden on the already stretched resources of the Court. Such a requirement would also impose an undue burden on those vehicle owners who do not wish to contest the violation but, rather, just want to pay it, because they

would then get stuck paying the court costs involved in the municipal infraction as well as the civil fine if they were found liable. Even if it were reasonable to impose the financial burden on the City, it is not reasonable to impose such burdens on the Court or the vehicle owners who do not wish to contest liability, just so that vehicle owners like Ms. Leaf do not have to go to the trouble of submitting a request that City file a municipal infraction, as was ultimately done by Ms. Leaf. (App. p. 00126).

It is also possible that Ms. Leaf is arguing that the administrative hearing process should be eliminated and anyone who wishes to contest their violation, rather than just pay it, should go through the municipal infraction process. This substitute procedure would also impose a substantial burden on the Court. It may also have an adverse impact on vehicle owners, as some who wish to contest their violation may be deterred from doing so by the court costs that can be assessed in addition to the civil fine if they lose in the municipal infraction proceedings. The free administrative hearing that is currently offered by the City alleviates this issue and helps free up the Court for other matters.

iv. The IDOT Rules and Determinations Have No Bearing on the Issue of Whether the ATE System Violates Due Process

Ms. Leaf argues the City has somehow violated due process by violating the 1,000 Foot Rule and the Calibration Rule and not complying with certain administrative decisions of the IDOT. Assuming without conceding that the IDOT regulations at issue were validly promulgated and apply to the City's ATE system, and that the IDOT determinations were properly introduced into evidence at trial, these items do not bear on a proper analysis for purposes of procedural due process. "Whether the process provided is compliant with IDOT regulations is not relevant to the procedural due process question." *Hughes*, 112 F. Supp. 3d at 846 ("That is, the ATE system may comply with procedural due process even if it is not compliant with IDOT regulations;" also pointing out, conversely, that compliance with IDOT regulations does not guarantee compliance with due process requirements). Moreover, as to the 1,000 Foot Rule, procedural due process only entitles Ms. Leaf to notice of the law (i.e., notice of the speed limits); it does not entitle her to notice of when and where the law will be enforced. Ms. Leaf is no more entitled to notice of ATE locations than she is entitled to notice of a patrol car's presence. There is no dispute that the speed limit is posted and the ordinance establishing the speed zone is published. The notice provided to Ms. Leaf is adequate for procedural due process.

As to the Calibration Rule, again, the City is, *at a minimum*, in substantial compliance with that Rule. (App. p. 00064) Until the IDOT provides a definition or other guidance as to what qualifies as "calibration[,]" we cannot know for certain if the City is in compliance with the Calibration Rule.

As to the IDOT decision referenced on page 37 of Ms. Leaf's Brief to this Court (i.e. Ex. B of Defendant's Motion to Dismiss filed May 26, 2015), even if that decision had been properly admitted into evidence at trial, it has no relevance to this matter, as it was issued more than one month after the violation at issue in this matter and does not purport to apply retroactively. In fact, that decision gave the 30 days to implement the "resulting actions" or appeal. Furthermore, it is the Court's job to decide what constitutes due process, not the IDOT's. *See McQuistion v. City of Clinton*, No. 14-0413, 2015 WL 9437783, at *12 (Iowa Dec. 24, 2015) ("the *court* must determine" whether the legislation meets the rational basis test) (emphasis added)).

D. Ms. Leaf's Substantive Due Process Rights Were Not Violated in this Matter

"Substantive due process prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *Zaber v. City of Dubuque,* 789 N.W.2d 634, 640 (Iowa 2010) (internal quotations omitted). First, the Court determines

whether a fundamental right is at issue. If so, the Court applies strict scrutiny to the challenged legislation; otherwise, the court applies the rational basis test. *King v. State*, 818 N.W.2d 1, 31 (Iowa 2012). A violation of substantive due process can also occur when conduct violates a fundamental right and "shocks the conscience." *King*, 818 N.W.2d at 31.

Ms. Leaf has cited to the right to interstate and/or intrastate travel as the source of the fundamental right at issue. Section 61.138 does not interfere with Ms. Leaf's right to travel, either interstate or intrastate. It merely requires Ms. Leaf comply with Iowa traffic laws while doing so and establishes a civil system for enforcing those laws. The enforcement of a valid traffic law—here, a speed limit—does not violate a motorist's right to travel. *See Scheckel v. State*, 838 N.W.2d 870, 2013 WL 4504919, *2 (Iowa Ct. App. 2013) (unpublished table opinion)("there is no constitutional right to drive, but rather driving is a privilege"); *Hughes*, 112 F. Supp. 3d at 842 (Cedar Rapids' ATE system does not violate the right to travel); *State v. Ross*, 2003 Iowa App. LEXIS 42 at *12 (Iowa Ct. App. Jan. 15, 2003)("Thus, the right to interstate travel does not encompass the commission of a crime while driving a vehicle."); *United States v. Hare*, 308 F. Supp. 2d 955, 1001 (D. Neb. 2004)("The constitutional right to travel through Nebraska is not a right to travel in any manner one wants, free of

state regulation, and it does not give defendants the right to ignore Nebraska's traffic laws at their discretion."); *State v. Hartog*, 440 N.W.2d 852, 856 (Iowa 1989)(holding mandatory seat belt law did not infringe upon any fundamental right); *Veach v. Iowa Dep't of Transp.*, 374 N.W.2d 248, 249 (Iowa 1985)(holding no fundamental right at stake); *State v. Hitchens*, 294 N.W.2d 686, 687 (Iowa 1980)(analyzing the "privilege of using the public highways").

Even if the right to travel were implicated in this matter, a fact which the City adamantly denies, Section 61.138 interferes with travel far less than a traffic stop by a police officer, which not only delays travel but also may affect the driver's insurance and driving record. *See* Section 61.138(c)(4)(providing that "[i]n no event will an Automated Traffic Citation be sent or reported to the Iowa Department of Transportation or similar department of any other state for the purpose of being added to the Vehicle Owner's driving record."). Moreover, Ms. Leaf is a resident of the State of Iowa and the City of Cedar Rapids; she is not a visitor to the City who was unaware of the presence of the ATE equipment. (App. pp. 00017 & 00023).

In the recent case of *City of Sioux City v. Jacobsma*, this Court rejected a due process challenge to the City of Sioux City's ATE ordinance.

Jacobsma, 862 N.W.2d at 348. The *Jacobsma* Court made clear that the interest involved in the matter was not a liberty interest but, rather, was "a property interest in not being subject to irrational monetary fines…" *Jacobsma*, 862 N.W.2d at 345. In doing so, the Court stated:

> Jacobsma does not appear to have a conventional liberty interest. He can drive his car anywhere he wants, subject to the laws of the road. He can loan his car to anyone he wants. His right to self-fulfillment or his right to be left alone do not seem implicated by the Sioux City ATE ordinance in any meaningful sense.

Jacobsma, 862 N.W.2d at 345. It is clear from the *Jacobsma* case that, contrary to the arguments made by Ms. Leaf, the right to travel is not impacted by automated traffic enforcement mechanisms such as Section 61.138 and no fundamental liberty interest is involved.

When a fundamental right is not involved, the Due Process Clause requires only "a reasonable fit between the government interest and the means utilized to advance that interest." *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005)(quoting *Reno v. Flores*, 507 U.S. 292, 302, 305 (1993)). Under this level of scrutiny, the legislature need not employ the best means of achieving a legitimate state interest. *Hensler v. City of Davenport*, 790 N.W.2d 569, 584 (Iowa 2010). "As long as the means rationally advances a reasonable and identifiable governmental objective, we must disregard the

existence of other methods . . . that we, as individuals, perhaps would have preferred." *Hensler*, 790 N.W.2d at 584. The court presumes legislation is constitutional. *Zaber*, 789 N.W.2d at 640.

In *Idris v. City of Chicago*, a case which was cited by the *Jacobsma* Court, the United States Court of Appeals reviewed a case out of the Northern District of Illinois concerning traffic camera technology and an accompanying ordinance very similar to those used in the City's ATE program under Section 61.138. *Idris*, 552 F.3d at 564. The *Idris* Court decided that Chicago need only establish a rational basis for its ordinance because no one has a fundamental right to violate a traffic regulation or to avoid being seen on a public street by a traffic camera. *Idris*, 552 F.3d at 566. It also noted that the United States Supreme Court "has never held that a property interest so modest" as the $90 fine imposed by Chicago's ordinance could be considered a fundamental right. *Idris*, 552 F.3d at 566. After rejecting the due process challenge in that case, the *Idris* Court went on to find that the ordinance did indeed pass the rational basis test. *Idris*, 552 F.3d at 567-568. *See also Smith v. City of St. Louis*, 409 S.W.3d 404, 425–26 (Mo. Ct. App. 2013) ("Reducing the dangerousness of intersections by targeting vehicles that violate existing traffic regulations is rationally and substantially related to the health, safety, peace, comfort, and general

welfare of the inhabitants of St. Louis, and is a valid exercise of City's police power."); *Mills v. City of Springfield, Mo.*, 2:10-CV-04036-NKL, 2010 WL 3526208 (W.D. Mo. Sept. 3, 2010) ("Under the lenient rational basis test, the City of Springfield's red light camera ordinance is rationally related to the legitimate government interest in public safety. Clearly, a legislative body could find that improved surveillance and enforcement of red light violations would result in fewer accidents.").

Just as the ordinance in *Idris* had a rational basis, so does Section 61.138. The City has an interest in the safety of the public and its police officers, as well as an interest in enforcing its traffic laws, and Section 61.138 is a rational way to further those interests. Section 61.138 holds vehicle owners, who are more easily identified based upon photographic evidence of the vehicle than the driver may be, responsible for the manner in which their vehicle is used and it does so in a manner that "reduces the costs of law enforcement and increases the proportion of all traffic offenses detected." *Idris*, 552 F.3d at 566. The enforcement scheme created by Section 61.138 is a perfectly rational way for the City to attempt to increase public safety by encouraging vehicles travel at appropriate and lawful speeds. It also is a rational way to increase public safety because it reduces the need for officers to monitor speeds on the interstate, thereby making

them available to protect the public in other areas of the City. Section 61.138 is also a perfectly rational way for the City to protect not only the public, but also law enforcement by reducing the number of officer's who have to spend time pulling over motorists on the side of the road of a dangerous stretch of interstate.

In arguing that her substantive due process rights were violated, Ms. Leaf again cites to the irrelevant, unadmitted determinations of the IDOT that she attached to her Motion to Dismiss that was filed the day of trial. She also again cites to Rule 761-144.6 in support of her arguments. As mentioned previously, the City has filed a Petition for Judicial Review in Linn County case number CVCV083255, based upon the IDOT determinations. That Petition alleges, among other things, that: (1) the Rules on which the IDOT determinations are based (which includes Rule 761-144.6) were improperly promulgated in that they did not follow the procedural requirements of Iowa Code Chapter 17A (the Iowa Administrative Procedure Act or "IAPA"), the administrative rules implementing IAPA, and the IDOT's own administrative rules; (2) the Rules on which the IDOT determinations are based are *ultra vires* in that they are beyond the scope of the authority delegated to IDOT by the Iowa Legislature; (3) Both the IDOT determinations and the Rules on which they

are based violate Article 3, Section 38A of the Iowa Constitution, establishing Municipal Home Rule; (4) Both the IDOT determinations and the Rules on which they are based violate Iowa Code §364.2, concerning the City's constitutional home rule authority; (5) The Rules on which the IDOT determinations are based are not properly applied to the City because they became effective after the IDOT issued permits for the City to implement and operate its ATE program, and there is no legitimate basis for revoking said permits; (6) Assuming, *arguendo*, the validity of the Rules on which the IDOT based the IDOT determinations, the application of the Rules to the material facts of record is wholly unjustifiable and so illogical as to be irrational; (7) The IDOT determinations are not supported by substantial evidence in that they disregard material information and rely on information which is incomplete and erroneous; (8) The IDOT determinations are lacking any foundation in rational agency policy; and (9) The IDOT determinations are so factually and analytically flawed as to be unreasonable, arbitrary, capricious, and an abuse of discretion. That Petition for Review is still pending and no decision has been rendered by the district court as to that Petition at this time. Therefore, it would be premature for the Court in this matter to take any action that is based upon the IDOT

determinations or the IDOT Rules upon which those determinations are based.

Moreover, even if the IDOT Rules on which the determinations are based are valid and the City violated those Rules, neither of which the City concedes, any such violation would not give rise to a constitutional claim, or any claim or defense, against the City. *Hughes*, 112 F. Supp. 3d at 846. The determinations of the IDOT and Rule 761-144.6 govern matters strictly between the City and the IDOT and do not create any rights in third parties, such as Ms. Leaf. *See, e.g., Marcus v. Young*, 538 N.W. 2d 285 (Iowa 1995)(neither Iowa Code Chapter 22 nor Iowa Admin. Code 681-17.13(22) afforded a private remedy in Court proceedings for individual whose confidential records were alleged to have been improperly released); *Schmeling v. NORDAM*, 97 F.3d 1336 (10th Cir. 1996); *Bonano v. E. Caribbean Airline Corp.*, 365 F.3d 81, 83-84 (1st Cir. 2004)(discussing lack of any provision for private enforcement of regulatory scheme); *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299 (6th Cir. 2000); *Dautovic v. Bradshaw*, 800 N.W.2d 755 (Table), 2011 WL 1005432 (Iowa App. 2011) (unpublished). Ms. Leaf appears to acknowledge this fact (App. p. 00008), but attempts to avoid this fact by claiming the IDOT determinations somehow prove the City is violating her due process rights. In making that

claim, Ms. Leaf again ignores the fact it is the Court's role to determine what constitutes due process and what passes the rational basis test for constitutional purposes, not the IDOT's.

Substantive due process prevents the government "from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *Zaber*, 789 N.W.2d at 640. "[S]ubstantive due process is reserved for the most egregious governmental abuses against liberty or property rights." *Blumenthal Inv. Trusts v. City of W. Des Moines*, 636 N.W.2d 255, 265 (Iowa 2001) (quoting *Rivkin v. Dover Twp. Rent Leveling Bd.*, 143 N.J. 352, 671 A.2d 567, 575 (1996)). A system which enforces the speed limit in a safe and efficient manner, while affording a full opportunity to appeal a citation in either an administrative hearing or the Iowa District Court, Small Claims Division, does not shock the conscience.

Ms. Leaf cannot support her claim that the ATE system infringes on a fundamental right, fails rational basis, or shocks the conscience.

V. The District Court Was Correct in Holding that Section 61.138 Does Not Violate the Equal Protection Clause

A. Scope and Standard of Appellate Review

The City agrees with Ms. Leaf that constitutional claims are reviewed de novo.

B. Section 61.138 Does Not Violate Ms. Leaf's Rights under the Equal Protection Clause

Ms. Leaf acknowledges there is no suspect class involved in this matter, but again asserts that the fundamental right to travel is implicated by Section 61.138. As argued previously in Division IV of this brief, Section 61.138 does not interfere with the right to travel and there is, therefore, no fundamental right at stake in this matter. Because there is no fundamental right involved in this matter and no suspect class is singled out by Section 61.138, Section 61.138 need only have a rational basis to survive a challenge under the Iowa Equal Protection Clause. *See Perkins v. Bd. of Supervisors,* 636 N.W.2d 58, 73 (Iowa 2001); *Hughes*, 112 F. Supp. 3d at 842-845.

Under rational basis review, "the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic process." *Hawkeye Commodity Promotions, Inc. v. Miller*, 432 F. Supp. 2d 822, 859 (N.D. Iowa 2006) (quoting *City of Cleburne*, 473 U.S. at 440). "A statutory classification that neither proceeds along suspect lines nor infringes fundamental rights must be upheld against equal protection challenge if there is any reasonably conceivable set of facts that could provide a rational basis for the classification." *See FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). "Under a traditional rational basis review, courts are

required to accept generalized reasons to support the legislation, even if the fit between the means and end is far from perfect." *Varnum v. Brien*, 763 N.W.2d 862, 879 n. 7 (Iowa 2009). "A statute or ordinance is presumed constitutional and the challenging party has the burden to negate every reasonable basis that might support the disparate treatment." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 458-59 (Iowa 2013). A "legislative choice is not subject to courtroom fact-finding, and may be based on rational speculation unsupported by evidence or empirical data." *Beach Commc'ns*, 508 U.S. at 307. "The City is not required or expected to produce evidence to justify its legislative action." *Horsfield*, 834 N.W.2d at 458–59.

As the basis for her equal protection claim, Ms. Leaf alleges that the City and Gatso, in implementing Section 61.138, "eliminate from consideration tens of thousands of vehicles" and 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." (Proof Brief of Defendant-Appellant (Amended), p. 49). These alleged facts are not a part of the trial record and should not be

considered by this Court. Even if the Court allows Ms. Leaf to argue using facts that are not in the record, her argument fails.

It does not matter for purposes of equal protection that the ATE system is not designed to capture every violation of traffic laws. Incremental problem solving or under inclusiveness does not make an ordinance unconstitutional. "Under the rational basis test, we do not require the ordinance to be narrowly tailored." *Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d 255 (Iowa 2007). An ordinance is not unconstitutional "simply because it benefits certain individuals or classes more than others." *Perkins,* 636 N.W.2d at 73 (citing *Train Unlimited Corp. v. Iowa Ry. Fin. Auth.,* 362 N.W.2d 489, 495 (Iowa 1985)). "If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 175 (1980) (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)).

The City's decision to implement an ATE system that captures only rear license plate images, as reflected on Trial Exhibit 1, satisfies the rational basis test. *See Hughes*, 112 F. Supp. 3d at 842 ("For example, the City could rationally conclude that a system that only photographs rear license

plates is less expensive and that it is more cost-effective to capture fewer people who violate the Ordinance with a less expensive system.") Implementing a system that takes pictures of both front and rear license plates would be more invasive of privacy (passengers in a vehicle may be identifiable), more costly, technically more difficult, largely redundant, and burdensome. *Hughes*, 112 F. Supp. 3d at 842 ("It is irrelevant that other ATE systems exist that allow for photographs of both front and rear license plates.").

Additionally, use of the database used by the City, Nlets, is rational.[7] *Hughes*, 112 F. Supp. 3d at 842 ("Defendants could rationally conclude that purchasing the license plate databases it does is the most cost-effective way to enforce the Ordinance.") It is a reasonable, cost-effective source of information. Trailers are rationally distinguishable from other vehicles—the trailer may not owned by the same person or entity that owns the vehicle pulling the trailer. Nor is the implementation of the ATE ordinance rendered unconstitutional by the fact that certain government-owned vehicles, including vehicles used by law enforcement and security personnel, may be excluded from the license database. *See Hughes*, 112 F. Supp. 3d at 842

[7] The City acknowledges that this paragraph regarding the database used by the City contains facts that are not part of the evidence that was admitted at trial. However, the City has little choice but to include these facts in order to address the facts alleged by Ms. Leaf that are not part of the trial record.

("That ATE enforcement may be underinclusive because of the limitation of the camera system and the license plate databases does not matter.") "The legislature may select one phase of one field and apply a remedy there, neglecting the others." *Hawkeye Commodity Promotions, Inc*, 432 F. Supp. 2d at 859 (quoting *Am. Fed'n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538 (1949)).

Allowing out-of-state vehicle owners a different process to contest the violation is also rational. Requiring out-of-state vehicle owners to travel to Iowa to contest their Automated Traffic Citation at an administrative hearing would not be reasonable, particularly in light of the relatively minor civil fine that is most often involved. *See* Cedar Rapids Municipal Code Section 61.138(d)(assessing a civil fine that is less than $100 for all non-construction zone speed violations that are not more than 25 mph over the posted speed limit). Out-of-state vehicle owners are required to follow the appearance requirements set by the Court if a municipal infraction is filed.

Because Ms. Leaf cannot show that the ATE system is constitutionally irrational, her claim that it violates the Equal Protection Clause fails.

VI. The District Court Was Correct in Holding that Section 61.138 Does Not Violate the Privileges and Immunities Clause

A. Scope and Standard of Appellate Review

The City agrees with Ms. Leaf that constitutional claims are reviewed de novo.

B. Section 61.138 Does Not Violate Ms. Leaf's Rights Under the Iowa Privileges and Immunities Clause

When an ordinance is challenged as a violation of the Iowa Privileges and Immunities Clause, the challenger "must negate every conceivable basis which may support the classification, and the classification must be sustained unless it is patently arbitrary and bears no relationship to a legitimate governmental interest." *Perkins*, 636 N.W.2d at 71-72 (quoting *John R. Grubb, Inc. v. Iowa Hous. Fin. Auth.*, 255 N.W.2d 89, 95 (Iowa 1977)). The Court "test[s] a challenge under the Privileges and Immunities Clause by the traditional equal protection analysis." *Perkins*, 636 N.W.2d at 73. If the "case does not involve a suspect class or a fundamental right, any classification made by the amendment need only have a rational basis." *Id.*

As part of both her substantive due process and privileges and immunities arguments, Ms. Leaf asserts a fundamental right to *intrastate* travel under the Iowa Constitution. The Court has declined to recognize such a right, at least in the context of a minor, and it should continue to do so in the case of an adult as well. *City of Panora v. Simmons*, 445 N.W.2d 363, 367 (Iowa 1989). "'Fundamental right' for purposes of constitutional review

is not a synonym for 'important.' Many important interests, such as the right to choose one's residence or the right to drive a vehicle, do not qualify as fundamental rights." *King*, 818 N.W.2d at 26. "Travel which is not interstate is, of course, not specifically mentioned in the constitution, and its status as a fundamental right has been debated." *City of Panora*, 445 N.W.2d at 367.

Even if the Court were to recognize the right to intrastate travel as requested by Ms. Leaf, and declare it a fundamental right, the right to intrastate travel is not at stake in this matter. Ms. Leaf can travel where she wants within the state; the City just requires that she follow the speed limits while she does so. The enforcement of a valid traffic law—here, a speed limit—does not violate a motorist's right to travel.[8] *See Hughes*, 112 F. Supp. 3d at 842; *United States v. Hare*, 308 F. Supp. 2d 955, 1001 (D. Neb. 2004); *State v. Hartog*, 440 N.W.2d at 856; *Veach v. Iowa Dep't of Transp.*,

[8] Ms. Leaf alleges on page 52 of her brief to this Court that "the fundamental right to interstate travel is violated when the unfamiliar motorist is more likely subject to citation from a speed trap." Even assuming this is true, a fact which the City does not concede, this is not Ms. Leaf's argument to make. The record is clear that she was aware of the presence and location of the City's ATE equipment prior to her citation and is not an "unfamiliar motorist." (App. p. 00023). Therefore, she does not have standing to make this argument. *Jacobsma*, 862 N.W.2d at 346("[i]f a statute is constitutional as applied to a defendant, the defendant cannot make a facial challenge unless a recognized exception to the standing requirement applies.")(quoting *State v. Robinson*, 618 N.W.2d 306, 311 n.1 (Iowa 2000)).

374 N.W.2d at 249; *State v. Hitchens*, 294 N.W.2d at 687; *State v. Ross*, 2003 Iowa App. LEXIS 42 at *12 (Iowa Ct. App. Jan. 15, 2003); *Scheckel v. State*, 838 N.W.2d 870, 2013 WL 4504919, *2 (Iowa Ct. App. 2013) (unpublished table opinion).

Because no fundamental right is involved in this matter, and Ms. Leaf has identified no suspect class, Section 61.138 survives Ms. Leaf's Privileges and Immunities challenge so long as it passes the rational basis test. For all of the reasons already articulated in this brief, Section 61.138 easily survives rational basis review.

ERROR PRESERVATION

As stated earlier in this brief, none of the six divisions of Ms. Leaf's brief to this Court contained a statement addressing how the issue was preserved for appellate review as required by Iowa R. of App. P. 6.903(2)(g)(1). Therefore, the City was unable to comply at the time its brief was filed with the portion of Iowa R. of App. P. 6.903(3) that requires the City to indicate whether it agrees with Ms. Leaf's statements on error preservation. Subsequent to the filing of the City's brief, Ms. Leaf included statements regarding error preservation in her reply brief ("Reply Brief"). The City then requested and was granted leave to respond to those statements via this amended final brief and this section entitled "Error

Preservation" is hereby added to the City's final brief for this purpose. In light of the fact this Court's Order granting leave to file this amended final brief specified that the addition of statements regarding error preservation was the only change that could be included in the amended final brief, the City made no deletions or other changes herein to the body of the City's final brief filed August 5, 2016, other than the addition of this section entitled "Error Preservation."

The City agrees with Ms. Leaf's statements as to error preservation contained in Division I(A) (Reply Brief, p. 3), Division V(A) (Reply Brief, p.25) and Division VI(A) (Reply Brief, p. 27) of her reply brief, although the City does not agree that all of the references to the portions of the record that are contained in those divisions of Ms. Leaf's reply brief are accurate, adequate or appropriate. As to Ms. Leaf's statement regarding error preservation in Division IV(A) (Reply Brief, p. 17) of her reply brief, the City agrees that Ms. Leaf argued in small claims court that her due process rights had somehow been violated, but the City affirmatively states that it does not believe Ms. Leaf specified that she was alleging both procedural and substantive due process violations until this matter reached the District Court on appeal. The City disagrees with Ms. Leaf's statements as to error

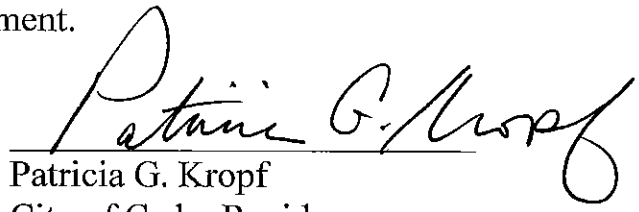
preservation contained in Division II(A) & (C) (Reply Brief, pp. 8 &13) and Division III(A) (Rely Brief, p. 16) of her reply brief.

CONCLUSION

Wherefore, the City prays that this Court affirm the judgment of the District Court in its entirety.

REQUEST FOR ORAL OR NONORAL SUBMISSION

The City does not believe oral argument is necessary but, in the event the Court deems it necessary to schedule oral argument in this matter, the City asks to be heard at that oral argument.



Patricia G. Kropf
City of Cedar Rapids
City Attorney's Office
101 First Street SE
Cedar Rapids, IA 52401
Telephone: 319-286-5025
Fax: 319-286-5135
Email: t.kropf@cedar-rapids.org

ATTORNEY FOR
PLAINTIFF-APPELLEE

CERTIFICATE OF COST

The City of Cedar Rapids is claiming no amount for printing or duplicating copies of briefs in this case in final form.

CERTIFICATE OF FILING/SERVICE

I hereby certify that on August 31, 2016, I electronically filed the foregoing Amended Final Brief of Plaintiff-Appellee 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.

James C. Larew
Larew Law Office
504 E. Bloomington Street
Iowa City, IA 52245
Telephone: 319-337-7079
Facsimile: 319-337-7082
Email: james.larew@larewlawoffice.com

ATTORNEY FOR DEFENDANT-APPELLANT

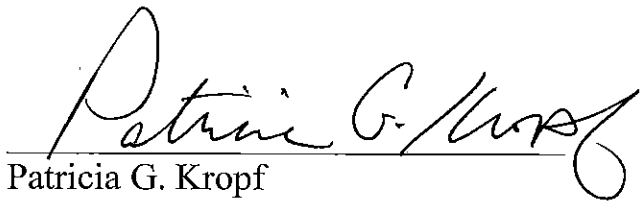
/s/Linnan Ryan
Linnan Ryan

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because: this brief contains 13,211 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. 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(a)(f) because : this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 Times New Roman.

Dated this 30th day of August, 2016.



Patricia G. Kropf
City of Cedar Rapids
City Attorney's Office
101 First Street SE
Cedar Rapids, IA 52401
Telephone: 319-286-5025
Fax: 319-286-5135
Email: t.kropf@cedar-rapids.org

ATTORNEY FOR PLAINTIFF-APPELLEE