

IN THE SUPREME COURT FOR THE STATE OF IOWA  
SUPREME COURT NO. 21-1437

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GARY V. KLUENDER, JR.,

Plaintiff-Appellant,

vs.

PLUM GROVE INVESTMENTS, INC.,

Defendant-Appellee.

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APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR FLOYD COUNTY THE  
HONORABLE JUDGE RUSTIN DAVENPORT

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APPELLANT'S FINAL BRIEF

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TODD P. PRICHARD

WALK, PRICHARD, BARESEL & MURPHY, PC  
103 N. Main St., PO. Box 454  
Charles City, Iowa 50616  
Telephone No: (641) 228-4500  
Facsimile No: (641) 228-3143  
Email: [todd@walkprichard.com](mailto:todd@walkprichard.com)  
ATTORNEYS FOR PLAINTIFF/APPELLANT

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## STATEMENT OF ISSUES

### I

PROPERTY RIGHTS ARE CONSTITUTIONALLY  
PROTECTED UNDER IOWA LAW

**Authorities:**

*Benton v Maryland*, 395 US 784 (1969)

*City of Cedar Rapids v. Mun. Fire & Police Ret. Sys. of Iowa*, 526 N.W.2d 284, 291 (Iowa 1995) (citation omitted)

*City of Sioux City v. Jacobsma*, 862 NW 2d 335 (Iowa 2015)

*Dusenberg v. United States*, 543 US 161 (2002)

### II

IOWA'S STATUTORY SCHEME FAILS TO PROVIDE  
AN ADEQUATE PROCEDURAL DUE PROCESS  
FRAMEWORK AND IS FACIALLY  
UNCONSTITUTIONAL

**Authorities:**

*City of Waterloo v. Bainbriege*, 749 N.W.2 245 (Iowa 2008)

*In re Lewis*, 257 N.W.2d 505, 510 (Iowa 1977)

*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)

*Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006)

### III

IOWA'S STATE INTEREST OF REVENUE  
COLLECTION IS NOT AFFECTED BY REQUIRING  
MORE ADEQUATE NOTICE AND VIOLATES  
SUBSTANTIVE DUE PROCESS

**Authorities:**

*In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994)

*In re Interest of M.D.*, 921 N.W.2d 229 (Iowa 2018)

*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)

#### IV

IOWA CODE §447.9 VIOLATES DUE PROCESS  
RIGHTS PROTECTED UNDER IOWA'S  
CONSTITUTION

#### **Authorities:**

*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)

*Moorman Mfg. Co. v. Bair*, 254 N.W.2d 737 (Iowa 1977)

*US v. Salerno*, 481 US 739 (1987)

*War Eagle Village Apartments v. Plummer*, 775 N.W.2d 714 (Iowa 2009)



## **ROUTING STATEMENT**

This case should be retained by the Supreme Court as this case presents a substantial constitutional question to the validity of a statute and is a case of substantial issue of first impression pursuant to Iowa R. App. P. 6.1101(2)(a) & (c).

## **STATEMENT OF CASE**

Appellant, Gary V. Kluender Jr. (hereinafter referred to “Appellant”), is a farmer and resident of Chickasaw County, Iowa. Appellant purchased approximately 48.77 acres of farmland in Floyd County, Iowa, in January of 2004 to add to his farm operation. (App. p. 31). On June 19, 2017, Plum Grove Investments, Inc., (hereinafter referred to as “Appellee”) did purchase at tax sale tax certificate number 2017-17003 which covered unpaid real estate taxes for the property that is the subject of this controversy and owned by the Appellant as shown in Exhibit D. (App. p. 37). The certificate issued to Appellee was **not** redeemed by Appellant. According to the discovery response given by Appellee and as stated in the Affidavit of Notice of Expiration of Right to Redeem, Appellee did mail by regular and certified mail a notice of the expiration of right of redemption. Said notice was mailed pursuant to Iowa Code §447.9. (App. pp. 39-41).

Despite Appellee’s statement of having mailed the notice, Appellant claims to have never received either letter, regular or certified. (App. pp. 17-18). Further, Appellee has admitted to have no proof of actual notice by way of a return receipt

that Appellant ever received the mailed Affidavit of Service of Notice of Expiration of Right of Redemption. (App. pp. 6-16). Appellee cannot show or demonstrate that Appellant received or had actual knowledge of this right to redeem his property from the tax sale.

It is not disputed that Appellant was never served by personal service the Appellee's claim to his farmland. Appellee admits that personal service, or any other form of notice besides regular and certified mail, was never attempted. Accordingly, there is no evidence showing that Appellant ever had actual notice of his expiration of right of redemption by way of the return receipt or any other means.

In August of 2020, Appellant did receive by certified letter a notice of termination for the subject farm ground at issue in this matter. Until that time, Appellant was unaware of Appellee's claim to his farm ground.

Motions for Summary Judgment were filed by both parties and a hearing was held on July 23, 2021. The Order regarding Motions for Summary Judgment was entered on September 30, 2021 granting the Defendant's Motion and denying the Plaintiff's Motion. (App. pp. 19-28). Notice of Appeal was timely filed on October 7, 2021. (App. pp. 29-30).

### **STATEMENT OF FACTS**

The facts at issue are identical to the statement of the case.

## **ARGUMENTS**

### **I. PROPERTY RIGHTS ARE CONSTITUTIONALLY PROTECTED UNDER IOWA LAW**

#### **SCOPE OF REVIEW**

Review of constitutional claims is de novo. *State v. Nail*, 743 N.W.2d 535, 538 (Iowa 2007). The standard of review for the grant of a motion for summary judgment is for the corrections of errors at law. *Ranes v. Adams Labs, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010); *Graham v. Kelly*, 821 N.W.2d 778 (Iowa App. 2012). Review of issues of statutory construction is for errors at law. *State v. Shuyter*, 763 N.W.2d 575, 579 (Iowa 2009).

The Iowa Constitution guarantees and protects the right of private property. "The Iowa Due Process Clause mandates that 'no person shall be deprived of life, liberty, or property, without due process of law.' Iowa Const. art. 1, § 9." *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682 (Iowa 2002). Iowa Courts have analyzed Iowa's claims under the Iowa Constitution and looked to the federal cases when determining Iowa due process. *City of Sioux City v. Jacobsma*, 862 N.W.2d 335 (Iowa 2015). Iowa Courts have recognized two frames for due process: procedural and substantive. *City of Sioux City v. Jacobsma*, citing *Benton v. Maryland*, 395 U.S. 784 (1969).

A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty or property interest. *Callender v. Skiles*, 591

N.W.2d 182, 189 (Iowa 1999). Procedural due process requires that before there can be a deprivation 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." *City of Cedar Rapids v. Mun. Fire & Police Ret. Sys. of Iowa*, 526 N.W.2d 284, 291 (Iowa 1995) (citation omitted); *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682 (Iowa 2002).

Federal and Iowa Courts have recognized private property rights as a protected liberty interest. *War Eagle Village Apartments v. Plummer*, 775 N.W.2d 714 (Iowa 2009). Given the protected liberty interest involved, Appellant is afforded procedural due process that prevents "depriving any person of property without 'due process of law.'" *War Eagle quoting Dusenbery v. United States*, 534 U.S. 161, 167, 122 S.Ct. 694, 699, 151 L.Ed.2d 597, 604 (2002). Accordingly, the person whose liberty may be hurt is entitled to notice and an opportunity to be heard. *Id.* Iowa's statutory scheme fails to provide such procedural safeguards.

Appellant's property and liberty interest in his farmland is extreme. At stake is his interest in land that has a monetary value in the hundreds of thousands of dollars and the means by which he makes his living as a farmer.<sup>1</sup> Given the protected liberty interest of Appellant in his ability to maintain ownership of his property,

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<sup>1</sup> See Iowa State University Center for Agricultural and Rural Development website <https://www.card.iastate.edu/farmland/> (last visited 3/1/2022) Iowa farmland value increased to \$11,907 an acre for "good" land. At issue here is 47 acres of good farmland.

Federal and Iowa Constitutional law requires a system of procedural process that is adequate to safeguard his rights from unjust deprivation. Iowa Code §447 does not provide adequate protection of procedural safeguards of the protected right of property in its failure to require adequate notice of the right of the land owner to redeem unpaid property taxes. Iowa Code fails to require adequate notice safeguards for individuals who are subject to deprivation of property rights.

**II. IOWA'S STATUTORY SCHEME FAILS TO PROVIDE AN ADEQUATE PROCEDURAL DUE PROCESS FRAMEWORK AND IS FACIALLY UNCONSTITUTIONAL.**

**SCOPE OF REVIEW**

Review of constitutional claims is de novo. *State v. Nail*, 743 N.W.2d 535, 538 (Iowa 2007). The standard of review for the grant of a motion for summary judgment is for the corrections of errors at law. *Ranes v. Adams Labs, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010); *Graham v. Kelly*, 821 N.W.2d 778 (Iowa App. 2012). Review of issues of statutory construction is for errors at law. *State v. Shuyter*, 763 N.W.2d 575, 579 (Iowa 2009).

The unconstitutional aspects of Iowa Code §447 in that it violates the due process clause of the US and Iowa Constitutions were adequately argued and cited by Appellant at the trial court level and therefore adequately preserved for appeal. Constitutional issues raised and cited with the trial court are preserved for appeal. *City of Waterloo v. Bainbridge*, 749 N.W.2d 245 (Iowa 2008).

Iowa's Code §447's notice provision is unconstitutional on its face. Statute provisions are unconstitutional on their face "means that it cannot be constitutionally applied under any conceivable set of circumstances." *Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006) *quoting In re Lewis*, 257 N.W.2d 505, 510 (Iowa 1977). ("A statute is not unconstitutional on its face unless it is unconstitutional in every conceivable state of facts; it is ordinarily not unconstitutional as applied unless it is unconstitutional as applied in the specific factual situation before the court" (Citation omitted.)); *referring to* 3 Chester J. Antieau & William J. Rich, *Modern Constitutional Law* §50.03, at 711 (1997) (stating a holding that a statute is unconstitutional on its face is a determination that the legislation is always unconstitutional in "every conceivable situation which might possibly arise"). *Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006).

Given that personal notice is never required under Iowa Code §447.9 informing a delinquent taxpayer of their right to redeem a tax certificate and therefore protect their liberty interest, Iowa Code §447.9 is unconstitutional on its face as the mere requirement of notice by mail is constitutionally inadequate.

The notice of requirement provision of Iowa Code §447 is so ineffective in protecting liberty interests, that there is no factual situation in which they are constitutionally adequate. The mailing of notice is not adequate due process protection under the US and Iowa Constitution.

Under the Iowa Code tax sale system, private actors bid and pay delinquent property tax accounts to the local county on the account of land owners who have failed to timely pay their property taxes. (*See generally* Iowa Code §446). A successful private bidder at a tax sale will receive a certificate that entitles the holder to collect late fees for the unpaid taxes and, eventually, take title to real property *if the certificate is not redeemed by the delinquent tax paying land owner* after the expiration of two years. (*see generally* Iowa Code §447 for the redemption rights of property tax payers and notice requirements of redemption for certificate holders). Under Iowa Code §447, tax lien certificates are redeemed by either the taxpayer, or someone else on the behalf of the taxpayer, paying the assessed tax due with the applicable interest and penalties. The money collected to redeem the tax certificate is remitted to the tax lien certificate holder to satisfy their purchase cost and investment return. The repayment of the tax and accompanying penalties provide for a significant return on investment, thus providing a strong financial incentive for investors to bid and purchase delinquent tax certificates.<sup>2</sup>

If, after one-year and nine months, the delinquent tax bill has not been paid or redeemed, the certificate holder is entitled to give notice that starts a final 90-day time period that will lead to the divestment of the delinquent taxpayer of his or her

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<sup>2</sup> Penalty and interest payments are paid to the bidder/certificate holder as an incentive to invest in delinquent tax certificates. The investor typically makes a 2% return on the unpaid balance each month (24% per annum) the taxes are not paid. This investment is only collected, however, if the certificate is redeemed. See Iowa Treasurer's website, WHAT IS A TAX SALE – Iowa County Treasurers, <https://www.iowatreasurers.org> last visited 3/8/22.

land if the delinquency is not redeemed (*see* Iowa Code §447.9). The statutory framework of Iowa Code §447 requires only that the certificate holder provide notice by mailing both a certified and regular letter to the property title holder (*see* Iowa Code §§447.9 – 447.12). **No personal service is required for the divestment of the subject property.** Iowa Code §447.9 maintains:

The notice shall be served by both regular mail and certified mail to the person's last known address and such service is deemed completed when the notice is deposited in the mail and postmarked for delivery.

(Iowa Code §447.9(1)).

Iowa Code gives no guidance for the form of notice, such as how the envelope should be labeled or printed (Iowa Code §447).<sup>3</sup> The silence of the Code in regards to specific standards for the form of notice, makes the process susceptible to fraud and mistake.

The system of notice and substantive due process procedure it creates is unfair to delinquent land owners. The Code does not require personal service. Further, no where in the code does the statute specify any standard of notification other than the required language outlined in Iowa Code. Such a system is unfair and fraught with

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<sup>3</sup> As Iowa Code Chapter 447 is written, the code section prescribes no specific form or format for how the letter is to be presented; this lack of specification in the code invites creative or even misleading mailings to be used for the notice. Given the extreme potential of financial gain in some tax sales (such as in this instance), there is an incentive to disguise or attempt to conceal the purpose of the notice from the receiver so as to comply strictly with the code but deceive the taxpayer with misleading markings on the letter or envelope.



potential abuse and mistakes.<sup>4</sup> Accordingly, Iowa Code §447.9 is unconstitutional on its face.

The above described statutory scheme violates the principles of procedural due process. “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The *Mathews* decision set up a three-prong test for determining adequate procedural due process: they are 1) the interest at stake, 2) the risk of erroneous deprivation, and 3) the nature of the Government’s interest. *Weizberg v. City of Des Moines*, 923 N.W.2d 200 (Iowa 2018).

The statutory scheme fails on the basis of violating the *Mathews*’ foundational principles of due process, by its lack of notice and due process protections. The Iowa statutory scheme does outline a procedure to challenge deed transfers under the regime. Under Iowa tax deed statutory scheme, Iowa Code §448 outlines the procedures for challenging a deed transfer. Unfortunately, the lack of actual notice or personal service is not grounds for challenging the deed transfer. Without the

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<sup>4</sup> Compare the lack of requirement of specificity in Chapter 447 with the foreclosure notice requirements mandating the color of paper certain information is to be presented on. See Iowa Code §654.4B(2) stating the creditor must use a proscribed form from the Attorney General.

foundational requirement of meaningful notice, the scheme is facially unconstitutional.

### **III. IOWA'S STATE INTEREST OF REVENUE COLLECTION IS NOT AFFECTED BY REQUIRING MORE ADEQUATE NOTICE AND VIOLATES SUBSTANTIVE DUE PROCESS**

#### **SCOPE OF REVIEW**

Review of constitutional claims is de novo. *State v. Nail*, 743 N.W.2d 535, 538 (Iowa 2007). The standard of review for the grant of a motion for summary judgment is for the corrections of errors at law. *Ranes v. Adams Labs, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010); *Graham v. Kelly*, 821 N.W.2d 778 (Iowa App. 2012). Review of issues of statutory construction is for errors at law. *State v. Shuyter*, 763 N.W.2d 575, 579 (Iowa 2009).

The State of Iowa's interest in the system of tax sales and redemption certificates is to create an incentive program for private actors to bid and invest in past due tax certificates so that the State's property tax revenue is stable. If the land owner fails to pay the tax due, the bidder will pay the tax and keep the revenue stream consistent. The Iowa's tax certificate regime provides lucrative incentives for bidders to pay unpaid taxes and fulfill a vital state interest of revenue collection (see footnote #2 above). The State's tax sale system provides lucrative incentives for bidders acting as investors to purchase tax certificates and thereby allowing the State to collect unpaid tax revenue. Thanks in part to the tax sale system, the property tax

revenue stream for the State and local jurisdictions is both consistent and stable as bidder/investors pay what delinquent payers haven't paid.

The requirements of how notice is made for the redemption of unpaid certificates is immaterial and bears no impact on the incentives to invest and bid on tax certificates. The State's interest is unaffected by how notice is made to the delinquent taxpayer. Investors are incentivized to bid and purchase unpaid certificates for the financial return on their investment, not by the notice provisions. Further, delinquent taxes would still be collected regardless of the notice requirements of Iowa Code §447. The notice provisions of Iowa Code §447 have no bearing on the State's interest in revenue collection.

The appropriate procedural due process safeguards depend on the specific situation of the liberty interests at risk. As the Iowa Supreme Court has noted, "We acknowledge the process due in each case is flexible depending on the particular circumstances." *In re A.MH.*, 516 N.W.2d 867, 870 (Iowa 1994) *quoted in In re Interest of M.D.*, 921 N.W.2d 229 (Iowa 2018).

The *Mathews* court noted that there are three factors used to balance what constitutes adequate procedural safeguards:

First, the private interest ... affected by the [proceeding]; 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 [third,] the Government's interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail.

*In re Interest of M.D.*, 921 N.W.2d 229 (Iowa 2018) quoting *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Given the *Mathews* factors for procedural due process, the notice provisions of Iowa Code §447.9 fail. The liberty interest of the Appellant is extreme in the current matter. Property rights and interests are protected and mandate adequate procedures that acknowledge the interests involved. Simply sending a letter by certified and first class mail to someone in jeopardy of losing private real-property does not meet that requirement. The current system of notice leaves too much to chance in terms of potential for mistake and fraud.

Second, the ease of the alternate procedure of requiring notice by personal service or at least requiring proof of actual notice is not burdensome to the tax sale system or to the certificate holder. More protective means are readily available to achieve notice that are not burdensome.

Third, requiring more adequate service beyond the demands of Iowa Code §447.9 does not place any burden on the State or impede the interest of tax collection.

The State's interest in revenue collection would not be harmed by enshrining and requiring safeguards of due process by requiring personal service on delinquent taxpayers. The tax sale system already provides ample and adequate financial

incentive for investors to purchase certificates. Requiring more stringent due process procedural safeguards, such as personal service, for notice in no way impedes the State's interest in revenue collection but would advance procedural due process protections of the constitutionally protected right of property ownership.

**a. IOWA STATUTORY REGIME ENDANGERS  
PROPERTY RIGHTS FOR NO APPARENT  
STATE PURPOSE.**

The lack of adequate safeguards relating to notice under Iowa's tax deed system for land owners unjustifiably jeopardizes citizens' property rights. The Fifth Amendment under the US Constitution prevents individuals from being deprived of "life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without just compensation." U.S. CONST. amend V.

Besides both being mentioned together in the Fifth Amendment, Due Process and the Takings clauses have other similarities in this case. In essence, the taking of a delinquent taxpayer's land amounts to a literal "taking" of land for the public purpose to enforce and ensure collection of tax revenue. While the actual taking is done by a private investor, the taking is incentivized and sanctioned by Iowa Code to support consistent and stable revenue collection. The system of transferring of land for the purpose of tax collection is roughly equivalent to condemnation proceedings in that property is being taken and transferred to another party. While

divestiture of land for condemnation proceedings and stripping of the title of land for unpaid taxes are very different procedures, both processes are, in the case of condemnation, and should, in the case of tax collection, be protected by procedural due process. Why then, do condemnation proceedings require personal service and tax deeds only require a certified letter? Both processes have the same result or outcome for the landowner; divestiture of real property. However, one process provides an adequate regime of due process safeguards while tax sale taking does not provide adequate due process protection.

#### **IV. IOWA CODE §447.9 VIOLATES DUE PROCESS RIGHTS PROTECTED UNDER IOWA'S CONSTITUTION**

##### **SCOPE OF REVIEW**

Review of constitutional claims is de novo. *State v. Nail*, 743 N.W.2d 535, 538 (Iowa 2007). The standard of review for the grant of a motion for summary judgment is for the corrections of errors at law. *Ranes v. Adams Labs, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010); *Graham v. Kelly*, 821 N.W.2d 778 (Iowa App. 2012). Review of issues of statutory construction is for errors at law. *State v. Shuyter*, 763 N.W.2d 575, 579 (Iowa 2009).

As stated, interpretation of the Iowa Constitution's protection of due process is identical to that of the federal case law.

Iowa Code §447.9 is unconstitutional on its face. Iowa Code §447.9 is unconstitutional in that it violates procedural Due Process as contemplated by the Iowa and Federal Constitutions. "When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *US v. Salerno*, 481 U.S. 739 (1987) *quoting*, *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976). "This requirement has traditionally been referred to as "procedural" due process." *Id.*

Statutes are unconstitutional on their face when they are unconstitutional in every conceivable factual circumstance of application. *See United States v. Raines*, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) *quoted in Moorman Mfg. Co. v. Bair*, 254 N.W.2d 737 (Iowa 1977). As Iowa Code §447.9 does not give adequate protection by requiring meaningful notice, there is no set of facts under the statute that provide adequate notice protection given the liberty interest at issue.

Specifically, the due process provision of the Iowa Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, §9. Further, the 14<sup>th</sup> amendment of the United States Constitution provides that "no state shall deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend, XIV, §1.

Iowa courts have held that property rights are of "significant interest." *War Eagle Village Apartments v. Plummer*, 775 N.W.2d 714 (Iowa 2009) quoting *Greene v. Lindsey*, 456 U.S. 444, 450-51. In *War Eagle*, the Iowa Supreme Court held that lease interests rights in property are a protected liberty and property interest. *Id.*

As held in *War Eagle*, "[d]ropping a letter in a mailbox is not notice, yet is deemed sufficient notice. It is mere lip service to meaningful notice." *War Eagle* at 721.

Appellant's interest at issue in the present matter is a more significant interest than that of a leasehold tenant. Appellant claims an ownership in fee, as opposed to an inferior leasehold interest at issue in the *War Eagle* case. Further, Appellant depends on the land for his livelihood, strengthening the argument for an important liberty interest. The *War Eagle* Court found that simply mailing by certified and regular mail was inadequate to provide adequate due process in the instance of a FED/leasehold interest, ergo, it must follow that the sole process of mailing by certified and regular mail is inadequate for Appellant's interest as well.

In light of Appellee's failure to properly provide notice, the deed transferring the subject real property to the Appellee must be invalidated and the Appellant must be given the notice and right to redeem his property.



**a. Time constraint for service is only one factor for Due Process consideration**

The district court relied on its analysis that due process only needs to be crafted or designed to provide timely notice of a hearing. In its analysis of the *War Eagle* case, the district court noted that time constraints of a hearing required a notice method quicker than mail to facilitate meaningful notice.

Analysis of the time factor misses the point of ensuring adequate process as required by the liberty interest at stake. Simply requiring certified and regular mail notice fails to ensure adequate notice and is subject to mistake and fraud by certificate investors. The liberty interest at stake should determine the process due, not simply a time constraint consideration. If the *War Eagle* case stands for anything, it is that the process codified in Iowa statute should be crafted to provide adequate procedural safeguards in light of the liberty interest at issue.

**b. Requirement of personal service is not onerous on certificate holders**

The requirement of personal service is a common requirement for many legal proceedings under Iowa Code and under Practice Rules.<sup>5</sup> Given the common use and practice, the initiation of a personal service action is not difficult or expensive.

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<sup>5</sup> See Iowa Code §633 requiring personal service for Guardian and Conservatorships. See Iowa Code §6B.3(2)(b) requiring personal service for Eminent Domain proceedings. See Iowa Code §665.7 requiring personal service for contempt proceedings. See Iowa R. Civ. P. 1.305 requiring personal service in civil matters.

Services are available throughout the State either through county sheriff offices or through the use of process servers.

Further, personal service is required in many instances under the code where arguably there is a lesser liberty interest at stake or issue. For example, to initiate a foreclosure proceeding, which strips land for non-payment of a secured lien, personal service is required as foreclosure is an equitable proceeding (*see* Iowa Code §654.1). Iowa R. Civ. P. 1.305 requires that personal service be made in all civil cases.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully prays the Court remand this matter to the District Court with instruction that the requirement of Iowa Code §447 does not meet the standard of due process under the Iowa Constitution and rule that Iowa Code §447.9 is unconstitutional on its face as it fails to provide for procedural due process as required by the US and State Constitutions.

### **APPELLANT'S REQUEST TO BE HEARD AT ORAL ARGUMENT**

The Appellant respectfully requests the matter be submitted with oral argument.

Respectfully submitted,



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Todd P. Prichard #AT0006309  
Walk, Prichard, Baresel & Murphy, PC  
103 N. Main St., PO. Box 454  
Charles City, Iowa 50616  
Telephone No: (641) 228-4500  
Facsimile No: (641) 228-3143  
Email: [todd@walkprichard.com](mailto:todd@walkprichard.com)  
ATTORNEY FOR APPELLANT

### **CERTIFICATE OF FILING**

I, Todd P. Prichard, Attorney for the Appellant, do hereby certify that I, or a person on my behalf, filed the within Appellant's Final Brief with the Clerk of the Supreme Court, Iowa Judicial Branch Building, by using the Electronic Document Management System on the 4<sup>th</sup> day of May, 2022.

/s/ Todd P. Prichard

Todd P. Prichard

### **CERTIFICATE OF SERVICE**

I, Todd P. Prichard, hereby certify that I, or a person acting on my behalf, served the within Appellant's Final Brief on the 4<sup>th</sup> day of May, 2022, by using the Electronic Document Management System, which will send notification of such filing to the counsel below:

James E. Nervig  
Brick Gentry, P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, IA 50266

I, Todd P. Prichard, hereby certify that I, or a person acting on my behalf, served the within Appellant's Final Brief on the 4<sup>th</sup> day of May, 2022, by mailing it to:

Gary V. Kluender, Jr.

/s/ Todd P. Prichard

Todd P. Prichard

### **CERTIFICATE OF COST**

I hereby certify that the actual amount paid for printing of the necessary copies of Appellant's Final Brief in final form was the sum of \$29.00, exclusive of service tax and postage, and that amount has been actually paid in full by me.

By: /s/ Todd P. Prichard  
Todd P. Prichard

### **CERTIFICATE OF COMPLIANCE**

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 5,418 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(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 font size and Times New Roman type style.

By: /s/ Todd P. Prichard  
Todd P. Prichard

Dated: May 4, 2022