

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1050

ALEX WAYNE WESTRA,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
MOTOR VEHICLE DIVISION
Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY
THE HONORABLE ARTHUR GAMBLE

APPELLANT'S FINAL BRIEF
AND
REQUEST FOR ORAL ARGUMENT

MATTHEW T. LINDHOLM
GOURLEY, REHKEMPER, & LINDHOLM, P.L.C.
440 Fairway Drive, Suite 210
West Des Moines, IA 50266
Telephone: (515) 226-0500
Facsimile: (515) 244-2914
E-Mail: mtlindholm@grllaw.com
ATTORNEY FOR APPELLANT

CERTIFICATE OF FILING

I, Matthew T. Lindholm, hereby certify that I will file the attached Brief by filing an electronic copy thereof to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, on December 20, 2018.

GOURLEY, REHKEMPER,
& LINDHOLM, P.L.C.

By: /s/ *Matthew Lindholm*

By: Matthew T. Lindholm, AT0004746
440 Fairway Drive, Suite 210
West Des Moines, IA 50266
Telephone: (515) 226-0500
Facsimile: (515) 244-2914
Email: mtlindholm@grllaw.com
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, Matthew T. Lindholm, hereby certify that on December 20, 2018, I served a copy of the attached brief on all other parties to this appeal by electronically filing a copy of the attached brief:

Robin Glenn Formaker
800 Lincoln Way
Ames, Iowa 50010

GOURLEY, REHKEMPER,
& LINDHOLM, P.L.C.

By: /s/ *Matthew Lindholm*

By: Matthew T. Lindholm, AT0004746
440 Fairway Drive, Suite 210
West Des Moines, IA 50266
Telephone: (515) 226-0500
Facsimile: (515) 244-2914
Email: mtlindholm@grllaw.com
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

CERTIFICATE OF FILING2

CERTIFICATE OF SERVICE2

TABLE OF AUTHORITIES6

STATEMENT OF ISSUES PRESENTED FOR REVIEW10

STATEMENT OF THE CASE.....13

NATURE OF THE CASE13

COURSE OF PROCEEDINGS13

STATEMENT OF FACTS13

ROUTING STATEMENT.....16

LEGAL ARGUMENT 18

I. IOWA DEPARTMENT OF TRANSPORTATION OFFICER AUSTIN WILSON VIOLATED MR. WESTRAS RIGHTS UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION BY EXCEEDING THE SCOPE OF HIS LEGAL AUTHORITY TO STOP MR. WESTRA'S VEHICLE FOR A TRAFFIC VIOLATION WHICH WAS UNRELATED TO THE SIZE, WEIGHT, AND LOAD OF MOTOR VEHICLES.....19

II. THE EXCLUSIONARY RULE UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION SHOULD HAVE BEEN APPLIED IN THE ADMINISTRATIVE PROCEEDINGS WHEN MR. WESTRA CHALLENGED HIS LICENSE SUPENSION RESULTING FROM THE ILLEGAL SEIZURE..26

III. SUBSTANTIVE AND PROCEDURAL DUE PROCESS PROTECTIONS UNDER ARTICLE 1, SECTION 9 OF THE IOWA CONSTITUTION WOULD BE VIOLATED IF MR. WESTRA IS NOT ALLOWED TO CHALLENGE THE LEGALITY OF THE STOP AT THE ADMINISTRATIVE PROCEEDING.....33

CONCLUSION39

REQUEST FOR ORAL ARGUMENT40

CERTIFICATE OF COMPLIANCE.....40

ATTORNEY'S COST CERTIFICATE41

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>U.S. Supreme Court Cases</u>	
<i>Bell v. Burson</i> , 402 U.S. 535 (1971).....	34, 36
<i>Immigration and Naturalization Service v. Lopez-Mendoza</i> , 468 U.S. 1032 (1984).....	27
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	38
<i>Reno v. Flores</i> , 507 U.S. 292 (1993).....	35
<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	34
<u>Iowa Cases</u>	
<i>Bergeson v. Persch</i> , 117 N.W.2d 431 (Iowa 1962).....	20
<i>Bowers v. Polk County Bd. of Supervisors</i> , 638 N.W.2d 682 (Iowa 2002).....	35, 38
<i>Branderhorst v. Iowa State Highway Commission</i> , 202 N.W.2d 38 (Iowa 1972).....	19
<i>Brownsberger v. Iowa Dept. of Transp.</i> , 460 N.W.2d 449 (1990).....	29, 30
<i>Didonato v. Iowa Dept. of Transp.</i> , 456 N.W.2d 367 (Iowa 1990).....	18, 32
<i>Fuller v. Dept. of Transp.</i> , 275 N.W.2d 410 (Iowa 1979).....	18, 32
<i>Gilchrist v. Bierring</i> , 234 Iowa, 899, 914, 14 N.W.2d 724, (Iowa 1944).....	35, 37
<i>Greenwood Manor v. Iowa Dep't of Pub. Health</i> , 641 N.W.2d 823 (Iowa 2002).....	17
<i>Hensler v. City of Davenport</i> , 790 N.W.2d 569 (Iowa 2010).....	34

<i>In the Matter of Property Seized from Sharon Kay Flowers</i> , 474 N.W.2d 546 (Iowa 1991).....	32
<i>Krueger v. Fulton</i> , 169 N.W.2d 875 (Iowa 1969).....	37
<i>Lamasters v. State</i> , 821 N.W.2d 856 (Iowa 2012).....	17
<i>Manders v. Iowa Dept. of Transp.</i> , 454 N.W.2d 364 (Iowa 1990).....	18
<i>Merchant’s Motor Freight v. State Highway Comm’n</i> , 32 N.W.2d 773 (Iowa 1948).....	23
<i>Midwest Auto. III, LLC v. Iowa Dep’t of Transp.</i> , 646 N.W.2d 417 (Iowa 2002).....	22
<i>Peterson v. Iowa Dept. of Transp.</i> , 508 N.W.2d 689 (Iowa 1993).....	25
<i>Rife v. D.T. Corner</i> , 641 N.W.2d 761 (Iowa 2002).....	26
<i>Simonson v. Iowa State University</i> , 603 N.W.2d 557 (Iowa 1999).....	17
<i>Soo Line Railroad v. Iowa Dept. of Transp.</i> , 521 N.W.2d (Iowa 1994).....	24
<i>State v. A-1 Disposal</i> , 415 N.W.2d 595 (1987).....	23
<i>State v. Baldon</i> , 829 N.W.2d 785 (Iowa 2013).....	31
<i>State v. Brooks</i> , 888 N.W.2d 406 (Iowa 2016).....	32
<i>State v. Cline</i> , 617 N.W.2d 277 (Iowa 2000).....	28
<i>State v. Gaskins</i> , 866 N.W.2d 1 (Iowa 2015).....	31
<i>State v. Hernandez-Lopez</i> , 639 N.W.2d 225, (Iowa 2002).....	34, 38
<i>State v. Klawonn</i> , 609 N.W.2d 515 (Iowa 2000).....	34
<i>State v. Lloyd</i> , 513 N.W.2d 742 (Iowa 1994).....	24, 25

<i>State v. Ochoa</i> , 792 N.W.2d 260 (Iowa 2015).....	31
<i>State v. Pals</i> , 805 N.W.2d 767 (Iowa 2011).....	31
<i>State v. Pettijohn</i> , 899 N.W.2d 1 (Iowa 2017).....	32, 35
<i>State v. Reiner</i> , 628 N.W.2d 460 (Iowa 2001).....	36
<i>State v. Schlemme</i> , 301 N.W.2d 721 (Iowa 1981).....	37
<i>State v. Sheridan</i> , 96 N.W.730 (Iowa 1903).....	28
<i>State v. Taeger</i> , 781 N.W.2d 560 (Iowa 2010).....	30, 39
<i>State v. Turner</i> , 630 N.W.2d 601 (Iowa 2001).....	28
<i>State v. Westendorf</i> , 400 N.W.2d 553 (Iowa 1987).....	16, 18, 26, 27, 28, 29, 31
<i>Zaber v. City of Dubuque</i> , 789 N.W.2d 634, 640 (Iowa 2010).....	35

Out of State Cases

<i>Florida Dept. of Highway Safety v. Hernandez</i> , 74 So. 3d 1070 (Fla. 2011)	33
<i>People v. Krueger</i> , 567 N.E.2d 717 (Ill. 1991)	33
<i>Pooler v. Motor Vehicles Division</i> , 755 P.2d 701 (Or. 1988).....	33
<i>State v. Lussier</i> , 757 A.2d 1017 (Vt. 2000)	33
<i>Watford v. Bureau of Motor Vehicles</i> , 674 N.E.2d 776 (Oh. 1996).....	33

Statutes and Constitutions

Article 1, section 8 of the Iowa Constitution)	13, 15, 19, 24, 26
Article 1, section 9 of the Iowa Constitution)	13, 15, 33, 37

Iowa Code Section 80.6.....	26
Iowa Code Section 80B.3.....	15
Iowa Code Section 321.2.....	20
Iowa Code Section 321.354.....	14
Iowa Code Section 321.476.....	21, 22, 23
Iowa Code Section 321.477.....	21, 23
Iowa Code Section 321J.1.....	15
Iowa Code Section 321J.13.....	18, 28, 29, 30, 32, 39
Iowa Code Section 321J.6.....	26
Iowa Code Section 321J.8.....	15
Iowa Code Section 321J.9.....	14
Iowa Code Section 718.2.....	26
Iowa Code Section 804.20.....	19, 32
Iowa Code Section 804.9.....	24
Iowa R. App. P. 6.1101(2)(c)	17

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. IOWA DEPARTMENT OF TRANSPORTATION OFFICER AUSTIN WILSON VIOLATED MR. WESTRAS RIGHTS UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION BY EXCEEDING THE SCOPE OF HIS LEGAL AUTHORITY TO STOP MR. WESTRA'S VEHICLE FOR A TRAFFIC VIOLATION WHICH WAS UNRELATED TO THE SIZE, WEIGHT, AND LOAD OF MOTOR VEHICLES.**

Legal Authority

Iowa Cases

Bergeson v. Persch, 117 N.W.2d 431 (Iowa 1962)
Branderhorst v. Iowa State Highway Commission, 202 N.W.2d 38 (Iowa 1972)
Merchant's Motor Freight v. State Highway Comm'n, 32 N.W.2d 773 (Iowa 1948)
Midwest Auto. III, LLC v. Iowa Dep't of Transp., 646 N.W.2d 417 (Iowa 2002)
Peterson v. Iowa Dept. of Transp., 508 N.W.2d 689 (Iowa 1993)
Rife v. D.T. Corner, 641 N.W.2d 761 (Iowa 2002)
Soo Line Railroad v. Iowa Dept. of Transp., 521 N.W.2d (Iowa 1994)
State v. A-1 Disposal, 415 N.W.2d 595 (1987)
State v. Lloyd, 513 N.W.2d 742 (Iowa 1994)

Statutes and Constitutions

Article 1, section 8 of the Iowa Constitution
Iowa Code Section 80.6
Iowa Code Section 321.2
Iowa Code Section 321.476
Iowa Code Section 321.477
Iowa Code Section 321J.6
Iowa Code Section 718.2
Iowa Code Section 804.9

II. THE EXCLUSIONARY RULE UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION SHOULD HAVE BEEN APPLIED IN THE ADMINISTRATIVE PROCEEDINGS WHEN MR. WESTRA CHALLENGED HIS LICENSE SUSPENSION RESULTING FROM THE ILLEGAL SEIZURE.

Legal Authority

U.S. Supreme Court Cases

Immigration and Naturalization Service v. Lopez-Mendoza, 468 U.S. 1032 (1984)

Iowa Cases

Brownsberger v. Iowa Dept. of Transp., 460 N.W.2d 449 (1990)

Didonato v. Iowa Dept. of Transp., 456 N.W.2d 367 (Iowa 1990)

Fuller v. Dept. of Transp., 275 N.W.2d 410 (Iowa 1979)

In the Matter of Property Seized from Sharon Kay Flowers, 474 N.W.2d 546 (Iowa 1991)

State v. Baldon, 829 N.W.2d 785 (Iowa 2013)

State v. Brooks, 888 N.W.2d 406 (Iowa 2016)

State v. Cline, 617 N.W.2d 277 (Iowa 2000)

State v. Gaskins, 866 N.W.2d 1 (Iowa 2015)

State v. Ochoa, 792 N.W.2d 260 (Iowa 2015)

State v. Pals, 805 N.W.2d 767 (Iowa 2011)

State v. Pettijohn, 899 N.W.2d 1 (Iowa 2017)

State v. Sheridan, 96 N.W.730 (Iowa 1903)

State v. Taeger, 781 N.W.2d 560 (Iowa 2010)

State v. Turner, 630 N.W.2d 601 (Iowa 2001)

State v. Westendorf, 400 N.W.2d 553 (Iowa 1987)

Out of State Cases

Florida Dept. of Highway Safety v. Hernandez, 74 So. 3d 1070 (Fla. 2011)

People v. Krueger, 567 N.E.2d 717 (Ill. 1991)

Pooler v. Motor Vehicles Division, 755 P.2d 701 (Or. 1988)

State v. Lussier, 757 A.2d 1017 (Vt. 2000)

Watford v. Bureau of Motor Vehicles, 674 N.E.2d 776 (Oh. 1996)

Statutes and Constitutions

Article 1, section 8 of the Iowa Constitution

Iowa Code Section 321J.13

Iowa Code Section 804.20

III. SUBSTANTIVE AND PROCEDURAL DUE PROCESS PROTECTIONS UNDER ARTICLE 1, SECTION 9 OF THE IOWA CONSTITUTION WOULD BE VIOLATED IF MR. WESTRA IS NOT ALLOWED TO CHALLENGE THE LEGALITY OF THE STOP AT THE ADMINISTRATIVE PROCEEDING.

Legal Authority

U.S. Supreme Court Cases

Bell v. Burson, 402 U.S. 535 (1971)

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

Reno v. Flores, 507 U.S. 292 (1993)

United States v. Salerno, 481 U.S. 739 (1987)

Iowa Cases

Bowers v. Polk County Bd. of Supervisors, 638 N.W.2d 682 (Iowa 2002)

Gilchrist v. Bierring, 234 Iowa, 899, 914, 14 N.W.2d 724, (Iowa 1944)

Hensler v. City of Davenport, 790 N.W.2d 569 (Iowa 2010)

Krueger v. Fulton, 169 N.W.2d 875 (Iowa 1969)

State v. Hernandez-Lopez, 639 N.W.2d 225, (Iowa 2002)

State v. Klawonn, 609 N.W.2d 515 (Iowa 2000)

State v. Pettijohn, 899 N.W.2d 1 (Iowa 2017)

State v. Reiner, 628 N.W.2d 460 (Iowa 2001)

State v. Schlemme, 301 N.W.2d 721 (Iowa 1981)

State v. Taeger, 781 N.W.2d 560 (Iowa 2010)

Zaber v. City of Dubuque, 789 N.W.2d 634, 640 (Iowa 2010)

Statutes and Constitutions

Article 1, section 9 of the Iowa Constitution

Iowa Code Section 321J.13

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings

Mr. Westra challenges the district court's denial of his petition for judicial review seeking to rescind a driver's license suspension for a breath test refusal under Iowa's implied consent law. Mr. Westra initially challenged the authority of the DOT to suspend his license through an administrative hearing alleging that the DOT officer lacked legal authority to stop his vehicle and seeking to have the exclusionary rule applied in those proceedings pursuant to Article 1, Sections 8 and 9 of the Iowa Constitution. Mr. Westra exhausted his administrative remedies and subsequently filed a petition for judicial review in which the court concluded that (1) the DOT officer lacked the legal authority to stop his vehicle but (2) Mr. Westra was without a statutory or constitutional recourse to rescind his license revocation stemming from that illegal seizure. Ruling on Petition for Judicial Review; App. 373. This appeal is a challenge to the district court's conclusions.

Statement of Facts

On May 9, 2017, Iowa Department of Transportation ("IDOT") Officer Wilson executed a traffic stop on Alex Westra in, Jasper County, Iowa while Mr.

Westra was operating a non-commercial vehicle. DOT Tran. P. 6, 7, 12¹; Rec P. 97; App. 107, 108, 113; 101. At the time of the stop, Officer Wilson was employed by the IDOT, wearing his uniform, displaying his badge, and utilizing his State of Iowa vehicle with flashing lights. DOT Hearing Tr. P. 6,7; App. 107, 108. Officer Wilson saw what he thought to be Mr. Westra's vehicle stopped on the traveled portion of the roadway near a turnaround connecting the opposite lanes of traffic on Interstate 80. DOT Tr. P. 9-11; App. 110-112. At the time he effectuated the stop he was acting as a Motor Vehicle Enforcement Officer and not as a citizen. DOT Tr. P. 11; App. 112. Once Officer Wilson began to slow down, Mr. Westra's vehicle continued past the turnaround and Officer Wilson used the turn-around to get behind Mr. Westra and activated his red and blue lights to effectuate a traffic stop for a violation of Iowa Code Section 321.354. DOT Tr. P. 9-11; App. 110-112.

Mr. Westra was eventually investigated and arrested for OWI and open container stemming from the stop of his vehicle. The implied consent proceedings were invoked and Mr. Westra refused to provide a specimen of his breath for chemical testing and the Department implemented driver's license suspension proceedings pursuant to Iowa Code Section 321J.9. Rec. P. 97; App. 101.

¹ The transcript from the DOT hearing testimony is included in the certified record and begins on page 98 but no other pages of that transcript appear to be numbered as part of the record. Thus, references to the DOT Transcript will be indicated as "DOT Tr." All other references will be referenced from the certified record as "Rec. P" or as a pleading in an effort to avoid confusion.

Mr. Westra requested an administrative hearing to challenge the suspension of his driver's license. Rec. P. 94-95; App. 98-99. During the administrative hearing Mr. Westra argued that the license suspension should be rescinded because IDOT officer Wilson lacked statutory authority to stop his vehicle and therefore he should be allowed to challenge the lawfulness of the stop under Article 1, Sections 8 and 9 of the Iowa Constitution. DOT Tr. P. 18-20; Rec. P. P. 5-58; App. 119-121; 9-62. These arguments continue to be the basis of this appeal.

Administrative Law Judge Martin Francis issued a proposed decision which upheld the revocation concluding that IDOT Officer Wilson was a "peace officer" and/or a "law enforcement officer" as defined in Iowa Code Section 321J.8(3)² and 80B.3(3) and therefore was acting within this authority. Rec. P. 72-77; App. 76-81. Mr. Westra filed a request for further review with the Director of Driver services and submitted a second brief in support of his position. Rec. P. 63-65; App. 67-69; Rec. P. 5-58; App. 9-62. The Director of Driver services was doubtful that Mr. Westra could even challenge the stop of the vehicle because there is no "exclusionary rule" in administrative license suspension proceedings but nonetheless determined that IDOT Officer Wilson "had the statutory authority to invoke the provisions of chapter 321J and proceed accordingly." Rec. P. 3-4; App. 7-8.

² ALJ Francis concluded that the applicable Iowa Code Section for the definition of "peace officer" was 321J.8(3) however the undersigned believes that ALJ inadvertently cited the wrong codes section which should have been 321J.1(8)(e).

After having exhausted his administrative remedies to have his driver's license rescinded, Mr. Westra subsequently filed a petition for judicial review with the district court asking that the decision of the Department be overturned. Petition for Judicial Review; App. 137-178. After briefing, the court found that the DOT officer lacked statutory authority to stop Mr. Westra's vehicle but concluded that he was without recourse to have the revocation rescinded. Judicial Review Ruling P. 6-15; App. 378-387. As it related to the request to have the exclusionary rule applied under the Iowa Constitution, the court found that although "Westra presents a persuasive argument in support of extending the exclusionary rule to license revocation proceedings under the Iowa Constitution," the court found that it was bound by the holding in *State v. Westendorf*, 400 N.W.2d 553 (Iowa 1987). Judicial Review Ruling P. 10-11; App. 382-383. The court further concluded that neither substantive nor procedural due process would be violated if Mr. Westra was not provided an avenue to rectify his driver's license suspension based upon the unlawful stop. Judicial Review Ruling P. 11-14; App. 383-386. Mr. Westra subsequently filed this appeal challenging the district court's conclusions. Notice of Appeal; App. 389-390.

Routing Statement

Retention of this case by the Iowa Supreme Court is appropriate because the case presents a substantial issue of first impression to determine whether the

exclusionary rule under the Iowa Constitution should be applied to administrative driver's license suspension proceedings and whether failure to do so violates due process under the Iowa Constitution. Iowa R. App. P. 6.1101(2)(c).

Preservation of Error

Each of Mr. Westra's arguments raised below were raised and ruled upon in the Judicial Review Proceedings. Brief in Support of Judicial Review; Ruling on Petition for Judicial Review; App. 254-275; 373-388. This is sufficient to have preserved error on these arguments. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) ("if the court's ruling indicates that the court considered the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved.")

Standard of Review

Mr. Westra has alleged that the DOT officer was without statutory authority to stop his vehicle and to this extent the standard of review is for corrections of errors at law. *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 830 (Iowa 2002). However, when constitutional issues are raised in an administrative proceeding, the court "must make an independent evaluation of the totality of the evidence and review is de novo." *Simonson v. Iowa State University*, 603 N.W.2d 557, 561 (Iowa 1999). As such, the issue of whether the officer was statutorily

justified in stopping Mr. Westra's vehicle is for correction of errors and the issue of whether Mr. Westra's constitutional rights were violated is de novo.

Legal Argument

Before diving into the statutory authority of the DOT officer to stop Mr. Westra and the subsequent application of any Iowa Constitutional Protections involved, it is important understand the current limitations on Mr. Westra to challenge his license suspension. Iowa Code Section 321J.13(2-5) provides for an administrative hearing to contest the revocation however, the grounds for contesting that revocation are limited to whether, (1) the officer had reasonable ground to believe the offense of operating while intoxicated had occurred, (2) whether the person refused the test, (3) whether the test indicated a level prohibited by law, and (4) whether the tests indicated the presence of controlled substances or a combination of alcohol and controlled substances. Iowa Code Section 321J.13(2)(a-c).

Historically, the Court has not allowed constitutional challenges to the stop of a persons' vehicle under the Fourth Amendment in these proceedings. See *Westendorf v. Iowa Dept. of Transp.*, 400 N.W.2d 553 (Iowa 1987); *Manders v. Iowa Dept. of Transp.*, 454 N.W.2d 364 (Iowa 1990). However, challenges outside the specific scope of the statute have been allowed. See *Didonato v. Iowa Dept. of Transp.*, 456 N.W.2d 367 (Iowa 1990) citing *Fuller v. Dept. of Transp.*, 275 N.W.2d

410 (Iowa 1979) (allowing driver's to contest driver's license revocations pursuant to Iowa Code Section 804.20 in the administrative context).

As Mr. Westra contends, the problem with this statutory scheme is that a licensed driver is not able to challenge the stop of his motor vehicle to rectify the loss of a drivers license as the result of being illegally stopped. Therefore, unless this Court provides that a license holder is allowed to challenge a driver's license suspension on Iowa Constitutional grounds at the administrative level, Mr. Westra and future individuals similarly situation will find themselves without a recourse for rectifying a license suspension resulting from violations of their Iowa Constitutional rights.

I. IOWA DEPARTMENT OF TRANSPORTATION OFFICER AUSTIN WILSON VIOLATED MR. WESTRA'S RIGHTS UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION BY EXCEEDING THE SCOPE OF HIS LEGAL AUTHORITY TO STOP MR. WESTRA'S VEHICLE FOR A TRAFFIC VIOLATION WHICH WAS UNRELATED TO THE SIZE, WEIGHT, AND LOAD OF MOTOR VEHICLES.³

Administrative Agencies and their employees do “not possess common law or inherent powers, but only those which are conferred by statute.” *Branderhorst v.*

³ The undersigned is cognizant of the fact that a similar issue was submitted to the Iowa Supreme Court for consideration in the case of *Rickie Rilea and Timothy Rilea v. Iowa Dept. of Transp.*, 17-1803 on September 12, 2018, and the Court's ruling in that case may have some bearing on the outcome of this case. However, it is important to note that the Department failed to preserve error on the citizens arrest doctrine argument in the present case as more fully discussed below.

Iowa State Highway Commission, 202 N.W.2d 38, 41 (Iowa 1972). The Department of Transportation is an administrative agency whose only powers are those granted by the legislature. *Bergeson v. Persch*, 117 N.W.2d 431 (Iowa 1962). Officer Wilson was employed by the DOT at the time he stopped Mr. Westra and therefore was limited in his authority through the legislature.

A. Officer Wilson Did Not Have Statutory Authority to Act.

Delegation of DOT powers are found in Iowa Code Section 321.2. This code section provides “*except as otherwise provided by law*, the state department of transportation shall administer and enforce the provisions of this chapter.” Iowa Code Section 321.2(1). Emphasis Added. It further provides that “the division of the state patrol of the department of public safety shall enforce the provisions of this chapter relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and see that proper safety rules are observed.” Iowa Code Section 321.2(2). Finally, it provides that “the state department of transportation and the department of public safety shall cooperate to insure the proper and adequate enforcement of the provisions of this chapter.” Iowa Code Section 321.2(3). Thus, it appears that the Iowa Department of Transportation and the Iowa State Patrol as a division of the Iowa Department of Public Safety are the two agencies tasked with enforcing Iowa

Chapter 321. However, the authority of the Iowa Department of Transportation is limited “as otherwise provided by law” whereas the Iowa State Patrol’s is not.

The “as otherwise provided by law” statutes which limit the power of DOT officer are found in Iowa Code Sections 321.476 and 321.477.

Prior to May 11, 2017, Iowa Code Section 321.477 provided:

The Department **may designate by resolution** certain of its employees upon each of whom there is hereby conferred the authority of peace officer to control and direct traffic and **weigh vehicles, and to make arrests for violations of the motor vehicles laws relating to the operating authority, registrations, size, weight and load of motor vehicles and trailers and registration of a motor carrier’s interstate transportation service with the department.** Emphasis Added.

Presumably in light of the recent court rulings finding the DOT’s authority was limited to enforcing statutes relating to operating authority, registrations, size, weight and load, the Iowa legislature amended Iowa Code Section 321.477. *See* 2017 Ia. Legis. Serv. Ch. 149 (H.F.463); Rec. P. 14-17. Notably, the legislature granted the DOT the authority to “enforce all laws of the state” and providing them “the same powers conferred by law on peace officers for the enforcement of all laws of this state and the apprehension of violators.” *Id.* The problem with these legislative changes is that they took effect on May 11, 2017, two days **AFTER** Mr. Westra was stopped by Officer Wilson. *See* 2017 Ia. Legis. Serv. Ch. 149 (H.F.463); Rec. P. 14-17.

Nevertheless, this is a significant and material change in the law which suggests (1) that prior to this amendment DOT officers did not have authority to enforce laws unrelated to “operating authority, registrations, size, weight and load” and (2) DOT officers had not been granted the same powers conferred by law on other peace officers. See *Midwest Auto. III, LLC v. Iowa Dep’t of Transp.*, 646 N.W.2d 417, 425 (Iowa 2002) (holding that a material modification of the language of a statute gives rise to “a presumption that a change in the law was intended”). This presumption is enhanced “when the amendment follows a contrary...judicial interpretation of an unambiguous statute.” *Id.*

Iowa Code Section 321.476 further limits the powers of IDOT officers by providing that:

Authority is hereby given to the department to stop any motor vehicle or trailer on the highways for the purposes of weighting and inspection, to weigh and inspect the same and to enforce the provisions of the motor vehicle laws relating to the registration, size, weight, and load of motor vehicles and trailers.

This code section further limits the authority of the DOT and specifically seems to disallow the DOT from stopping a person for any reason other than those set forth in the statute.

B. Judicial Precedent Also Limited the Authority of Officer Wilson.

Not only do the statutes specifically limit the power of IDOT officers but judicial precedent interpreting those decisions also limit their powers. For example,

in *Merchant's Motor Freight v. State Highway Comm'n*, 32 N.W.2d 773 (1948), the Iowa Supreme Court was asked to determine whether the State Highway Commission (i.e. the predecessor to the Iowa Department of Transportation) had authority to issue citations for registration violations. In rendering an opinion that the Department was without authority to issue such citations, the court specifically concluded that Iowa Code Section 321.477 limited the DOT's authority to simply enforce traffic statutes regulating size, weight and load of motor vehicles. *Id.* at 775 (“except as authorized by statute, [the DOT] [is] without authority to act...”).

This rationale was reaffirmed in *State v. A-1 Disposal*, 415 N.W.2d 595 (1987). In *A-1* the Court was asked to determine whether Iowa Code Section 321.477 and 321.476 allowed DOT officers to *stop* commercial vehicles without any probable cause. *Emphasis Added.* The Court found that the DOT could effectuate such stops on commercial vehicles, however the court succinctly concluded that “DOT officers’ power to intrude on individuals is strictly limited by the Iowa Code to inspecting for registration, weight, size, load and safety violations.” *Id.* at 599.

The Court’s analysis in *Merchant’s Motor Freight* and *A1-Disposal* is applicable to the traffic basis for the traffic stop at issue in this case. Given that Mr. Westra was not driving a commercial vehicle and he was not stopped for “registration, weight, size, load, or safety” enforcement purposes, he acted outside the scope of his statutory authority and violated Mr. Westra’s right to be free from

an unreasonable search and seizure under Article 1, Section 8 of the Iowa constitution.

C. The Citizens Arrest Doctrine Does Not Override Officer Wilson's Statutory Limitations.

The Department contends that Officer Wilson was authorized to stop Mr. Westra pursuant to his powers and authority as a citizen pursuant to Iowa Code Section 804.9(1) and the holding in *State v. Lloyd*, 513 N.W.2d 742 (Iowa 1994). This argument must fail simply because those are not the facts. See DOT Tr. P. 11; App. 112. (Q: When you made the stop, you were acting as a Motor Vehicle Enforcement Officer? A: Yes, I was). However, there are other arguments that are equally persuasive.

First and most importantly, the Department never argued at the administrative hearing or on review to the Director of Driver Services that Officer Wilson was justified in stopping Mr. Westra pursuant to his citizen's arrest authority. DOT Tr. P. 1-35; App. 102-136. Moreover, neither ALJ Francis nor the Director of Driver Services ever concluded that Officer Wilson was justified in stopping Mr. Westra pursuant to his citizens arrest authority. Rec. P. 3-4; 72-77; App. 7-8. This argument was raised for the first time in the judicial review proceeding and therefore has been waived and not preserved. See *Soo Line Railroad v. Iowa Dept. of Transp.*, 521 N.W.2d (Iowa 1994) (finding that the Departments failure to raise takings issue at

the initial stages at the agency level cannot be raised for the first time on judicial review and therefore Department was precluded from raising it); See also *Peterson v. Iowa Dept. of Transp.*, 508 N.W.2d 689 (Iowa 1993)(finding that driver who raised for the first time to the Director of Driver services an statutory issue not raised at the initial contested case hearing was precluded from raising it even to the Director let alone on judicial review).

Second, *State v. Lloyd*, 513 N.W.2d 742 (Iowa 1994), is distinguishable from this case. The major distinguishing fact is that the officer in *Lloyd* came across State lines which thereby effectively revoked, by operation of law, his authority to act as a peace officer in the State of Iowa. In the present case, the Department seems to assert that a fully uniformed officer, driving a State issued vehicle, while being paid by the State as an officer, while using the flashing lights of that Stat issued vehicle, can somehow step out of the confines placed on them by the legislature at will and without any triggering event. In other words, Officer Wilson can become a sheep in wolf's clothing whenever he chooses.

If this were true one must wonder, when if ever did he transform back from a sheep to a wolf? Was it before he arrested Mr. Westra? If so what was the triggering event that would have indicated such? This is important for assessing civil liability and immunity claims. Was it after implied consent was invoked? If not, then implied consent was not lawfully invoked as only a "peace officer" can invoke

implied consent. See Iowa Code Section 321J.6. If Officer Wilson transformed his role from a wolf to a sheep at the time he activated his lights to stop Mr. Westra, in his state issued vehicle, and while in full uniform, is he subject to being criminally charged for impersonating a peace officer or public official? See Iowa Code Section 80.6 and 718.2. As these examples point out this contention is ridiculous.

Finally, a citizens' arrest in this case was never perfected. In order to perfect a citizen's arrest, the citizen making the arrest must inform the person to be arrested of the intent to arrest and the reasons for the arrest. *Rife v. D.T. Corner*, 641 N.W.2d 761, 769 (Iowa 2002). In the present case, the record is devoid of any evidence that Officer Wilson notified Mr. Westra that he was stopping him and/or arresting him under this authority as a citizen. Thus, the citizens arrest was never perfected as it related to the stop and therefore cannot justify the stop.

II. THE EXCLUSIONARY RULE UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION SHOULD HAVE BEEN APPLIED IN THE ADMINISTRATIVE PROCEEDINGS WHEN MR. WESTRA CHALLENGED HIS LICENSE SUSPENSION RESULTING FROM THE ILLEGAL SEIZURE.

The Judicial Review Ruling precluded Mr. Westra's challenge to have his license reinstated under Article 1, Section 8 of the Iowa Constitution relying entirely on of the holding in *Westendorf*. Judicial Review Ruling P. 10; App. 382. For the reasons discussed below, the *Westendorf* rationale is unpersuasive given the purposes of the exclusionary rule under the Iowa Constitution, legislative reductions

in the barriers between the criminal and administrative proceedings, the recent advancements of the exclusionary rule under the Iowa Constitution, and the availability of citizens of other states to challenge the constitutionality of a stop in license suspension proceedings.

A. Reliance on the *Westendorf* rationale is not sound.

In *State v. Westendorf*, 400 N.W.2d 553 (Iowa 1987), the Iowa Supreme Court concluded that the exclusionary rule under the Fourth Amendment of the United States Constitution was not applicable in driver's license suspension proceedings. In reaching this conclusion, the Court applied a cost benefit analysis as delineated by the United States Supreme Court in *Immigration and Naturalization Service v. Lopez-Mendoza*, 468 U.S. 1032 (1984). In applying this the cost-benefit framework, the Court balanced the potential benefit of excluding the unlawfully seized evidence against the resulting cost of societal interests of the loss of reliable evidence that a licensed driver drove while intoxicated. *Id.* at 557. In determining that there was little benefit to excluding the evidence, the Court concluded that there would be "little force as a deterrent because the department does not control the actions of the police." *Id.* That simply is not true in this case as the same agency engaged in suspending Mr. Westra's license is the same agency who employed the officer who effectuated the unlawful stop.

More importantly, the exclusionary rule under the Iowa Constitution has a broader purpose than the Federal counterpart. See *State v. Cline*, 617 N.W.2d 277 (Iowa 2000) abrogated on other grounds by *State v. Turner*, 630 N.W.2d 601 (Iowa 2001). In *Cline*, the Court recognized that under the Iowa Constitution, the exclusionary rule’s purpose was not limited to deterring police misconduct but also was necessary to “provide a remedy for constitutional violations” and to “protect the integrity of the judiciary.” *Id.* at 290. Thus, police deterrence is not the only consideration when determining whether to apply the exclusionary rule under the Iowa Constitution. Refusing to apply the exclusionary rule under the Iowa Constitution in the present case would be disregarding the expanded purpose of the exclusionary rule as set forth in *Cline* because Mr. Westra would not be “provide[d] a remedy for [this] constitutional violation.” Nor does refusing to apply the rule advance integrity in the administrative process especially when the same agency that employs the officer who engages in illegal conduct is the same agency tasked with suspended the license as a result of that illegal conduct. See *State v. Sheridan*, 96 N.W.730, 731 (1903) (stating that to admit illegally obtained evidence is to “emasculate the constitutional guarantee”).

Another justification undermining the holding in *Westendorf*, is the legislature’s enactment of Iowa Code Section 321J.13(6) after the Court’s pronouncement in that case. Iowa Code Section 321J.13(6), allows drivers who are

suspended for implied consent violations to have those suspensions removed when there is an order suppressing evidence on the criminal charge of OWI. This has been called a “mandatory exclusion rule” and one of the purposes of enacting this statutory procedure was to “remove some of the barriers erected by this court to separate the administrative and criminal proceedings for OWI.” *Brownsberger v. Iowa Dept. of Transp.*, 460 N.W.2d 449, 451 (1990). Given that no criminal OWI charge was filed, Mr. Westra could not avail himself this this legislative avenue for reinstating his driving privileges.

The purported purpose in *Westendorf* for refusing to allow the exclusionary rule under the Fourth Amendment was due to the high cost of losing “reliable and relevant proof that licensed operators have driven while intoxicated.” *Westendorf*, 400 N.W.2d at 557. The enactment Iowa Code Section 321J.13(6) seemingly erodes that rationale as it provides an avenue for the State to “lose” intoxication evidence following a favorable suppression ruling whether it be from a statutory or constitutional violation when the evidence is suppressed in a criminal charge of operating while intoxicated. Unfortunately, what was not contemplated by the legislature was factual scenarios like the present one where a license holder is not afforded the protections of Iowa Code Section 321J.13(6) either because a criminal charge for OWI is not filed or was voluntarily dismissed before a suppression ruling could be obtained.

The latter situation occurred in *State v. Taeger*, 781 N.W.2d 560 (Iowa 2010). The Iowa Supreme Court was asked to determine whether the State could voluntarily dismiss a pending criminal charge for OWI after the filing of a motion to suppress in order to preclude the license holder from securing a favorable ruling on that motion and using the protections of Iowa Code Section 321J.13(6) to get his license back. The Court concluded that “in enacting section 321J.13(6) the legislature intended to provide a remedy in the civil licensing proceeding even if incomplete, when the evidence of intoxication was obtained in violation of constitutional or statutory law.” *Id.* at 567. The Court went on to further conclude that allowing prosecutors to dismiss charges prior to the motion to suppress for reasons asserted in the motion to suppress, “would be to sanction a manipulation that is ‘not in the furtherance of justice’ in light of the clear legislative direction.” *Id.*

The interpretations of Iowa Code Section 321J.13(6) as set forth in *Brownsberger* and *Taeger*, make several things clear. First, this section was enacted to remove the barriers between the criminal and administrative proceedings when evidence is obtained in violation of statutory or constitutional law and provides a remedy to rectify a license suspension based on those violations. Second, in so providing this remedy, the legislature has expressed the view that they are not concerned about losing “reliable and relevant proof that licensed operators have driven while intoxicated” when that evidence is obtained illegally.

To disallow Mr. Westra's constitutional challenge at the administrative hearing would be tantamount to "sanctioning a manipulation" by providing an incentive to the State not file a criminal charge when there is an obvious constitutional challenge to the seizure. It also can be characterized as an ambush on Iowa drivers who are essentially impliedly consenting to a revocation of driving privileges when that revocation is based upon an unconstitutional seizure. In light of the reasons expressed above, the analysis performed in *Westendorf*, does not have sufficient teeth to prevent Mr. Westra from challenging the license suspension on Iowa constitutional grounds at the administrative proceeding.

B. Other considerations.

The Iowa Supreme Court has not been shy in recent years about highlighting the importance of the Iowa Constitution in differing scenarios and quick to apply greater protections under the Iowa Constitution when there are legitimate reasons for doing so. See *State v. Pals*, 805 N.W.2d 767 (Iowa 2011) (invalidating a consent search under the Iowa Constitution); *State v. Ochoa*, 792 N.W.2d 260 (Iowa 2015) (search of parolee invalidated under the Iowa Constitution); *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013) (invalidating a consent search of a parolee under the Iowa Constitution); *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015) (invalidating a search incident to arrest under the Iowa Constitution). Even more importantly, the Iowa Supreme Court has not hesitated to expand the protections of the Iowa Constitution

to drunk driving cases. See *State v. Pettijohn*, 899 N.W.2d 1 (Iowa 2017) (invalidating a warrantless breath test under the Iowa Constitution). It would be a disingenuous digression from recent Iowa Supreme Court precedent which has expanded the protections to Iowan's through the Iowa Constitution to ignore Mr. Westra's plea.

Although Iowa Code Section 321J.13(2) limits the basis for challenges in the administrative context, the Iowa Supreme Court has judicially created another basis for challenging a driver's license suspension for a violation of the implied consent laws by applying an exclusionary rule at the administrative proceedings to any evidence obtained in violation of Iowa Code Section 804.20. *Didonato v. Iowa Dept. of Transp.*, 456 N.W.2d 367 (Iowa 1990) citing *Fuller v. Dept. of Transp.*, 275 N.W.2d 410 (Iowa 1979). It seems counterintuitive to allow a statutory exclusionary rule in these proceedings but not a constitutional one. The same can and should be said given that the Federal and Iowa Constitution rule has been applied in civil forfeiture proceedings as well. See *In the Matter of Property Seized from Sharon Kay Flowers*, 474 N.W.2d 546 (Iowa 1991). The expansion of the exclusionary rule under the Iowa Constitution into historically forbidden territory seems ripe for consideration. See *State v. Brooks*, 888 N.W.2d 406 (Iowa 2016) (Iowa Supreme Court was asked to expand the rule to probation revocation proceedings but never got to reach the issue).

Finally, many other States allow drivers to challenge the constitutionality of the stop in administrative driver's license suspension proceedings and apply the exclusionary rule in one form or another and for various reasons consistent with Mr. Westra's position. See *State v. Lussier*, 757 A.2d 1017 (Vt. 2000) (finding that a valid stop is a prerequisite to lawfully invoking implied consent and applying the exclusionary rule under the State constitution); *Watford v. Bureau of Motor Vehicles*, 674 N.E.2d 776 (Oh. 1996) ("we agree with appellant that a lawful arrest, including a constitutional stop, must take place before a refusal to submit to chemical tests.....triggers a license suspension"); *People v. Krueger*, 567 N.E.2d 717 (Ill. 1991) (lawful seizure prerequisite to license suspension); *Pooler v. Motor Vehicles Division*, 755 P.2d 701, 702-03 (Or. 1988) (validity of arrest including the stop can be determined in license suspension proceeding); *Florida Dept. of Highway Safety v. Hernandez*, 74 So. 3d 1070 (Fla. 2011) (lawful arrest is required in order to sustain license suspension and can be challenged in an administrative proceeding).

III. SUBSTANTIVE AND PROCEDURAL DUE PROCESS PROTECTIONS UNDER ARTICLE 1, SECTION 9 OF THE IOWA CONSTITUTION WOULD BE VIOLATED IF MR. WESTRA IS NOT ALLOWED TO CHALLENGE THE LEGALITY OF THE STOP AT THE ADMINISTRATIVE PROCEEDING.

Article I, Section 9 of the Iowa Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law." The federal and state Due Process Clauses and nearly identical and the same analysis applies to both

claims. *State v. Klawonn*, 609 N.W.2d 515, 519 (Iowa 2000). Two separate and individual interest are protected by the due process clause including substantive and procedural due process. *United States v. Salerno*, 481 U.S. 739, 746, 107 S.Ct 2095, 2101, 95 L.Ed. 697, 708 (1987).

It has long been established that the due process clause applies to the suspension of driving privileges. In the words of Justice Brennan of the United States Supreme Court:

“Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a ‘right’ or a ‘privilege.’”

Bell v. Burson, 402 U.S. 535, 539 (1971).

A. Substantive Due Process Challenge.

Substantive due process “prevents the government from interfering with ‘rights’ implicit in the concept of ordered liberty.” *State v. Hernandez-Lopez*, 639 N.W.2d 225, 237 (Iowa 2002), citing *United States v. Salerno*, 481 U.S. 739, 746 (1987). A two-stage analysis is used when analyzing a substantive due process challenge. *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010). The first step is to determine the nature of the individual right involved, and then to apply the appropriate level of scrutiny. *Id.* If a fundamental right is involved, the

government may not infringe on that right, “ ‘no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.’ ” *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 694 (Iowa 2002) (quoting *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1, 16 (1993)). On the other hand, if the right is not fundamental, the State only needs to show that there is a “reasonable fit” between the legislature’s purpose and the means chosen to advance that purpose. *Zaber v. City of Dubuque*, 789 N.W.2d 634, 640 (Iowa 2010).

For decades Iowa has recognized that the right to earn a living is a fundamental right in our state. *Gilchrist v. Bierring*, 234 Iowa, 899, 914, 14 N.W.2d 724, 732 (Iowa 1944). “The right to earn a living is among the greatest of human rights and, when lawfully pursued, cannot be denied.” *Id.* “It is the common right of every citizen to engage in any honest employment he may choose, subject only to such a reasonable regulation as are necessary for the public good.” *Id.* The fundamental nature of the right to earn a living as being bound together with one’s driving privileges, was recently reiterated by the Iowa Supreme Court in *State v. Pettijohn*, 899 N.W.2d, 1, 35 (Iowa 2017) (“We recognize that unlike the loss of the ability to drive upon public roads, the loss of the ability to boat on state waterways ordinarily does not implicate the fundamental right to earn a living.”).

Also long recognized as a fundamental right, is the right of privacy against unreasonable searches and seizures. *State v. Reiner*, 628 N.W.2d 460, 464 (Iowa 2001). It cannot be said with a straight face that the right of privacy is not involved when the agency charged with suspending the license is the same agency who employed the officer who engaged in an illegal seizure, and is the same agency who is unwilling to let the licensee challenge their employees illegal conduct in order to return what was taken from him. This scenario provides a grotesque incentive for invasion of privacy by the agency tasked with determining whether the license should be suspended and undermines the right of privacy guaranteed to Iowa citizens through the Iowa Constitution.

Whether cloaked as a fundamental right of privacy or as a right to earn a living, it can hardly be said that subjecting a driver to loss of license as a result of illegal police conduct without allowing him to challenge that conduct “is narrowly tailored to serve a compelling state interest.” If that were the case, then any illegal conduct by police would be sufficient to override a person’s constitutional right. This creates further incentive for the police to violate these constitutional rights.

Even if a fundamental right is not at issue, there still is interference with two constitutionally protected liberty interests. The first and most directly impacted is Mr. Westra’s liberty interest in the maintenance of his driver’s license. *Bell v. Burson*, 402 U.S. 535, 539 (1971). “Once licenses are issued, as in petitioner’s case,

their continued possession may become essential to the pursuit of a livelihood.” *Id.* “Suspension of issued licenses thus involves state action that adjudicates important interests of the licensee ... and relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a ‘right’ or a ‘privilege.’” *Id.* The second liberty interest implicated is his liberty interest in maintaining his chosen trade for which his ability to operate a motor vehicle is critical. See *Gilchrist*, 234 Iowa at 914-915.

The State’s interest in reducing the number of highway accidents due to drunk driving is significant. *Krueger v. Fulton*, 169 N.W.2d 875, 878 (Iowa 1969). The implied consent process is a legitimate advancement of that interest. *State v. Schlemme*, 301 N.W.2d 721, 723 (1981). However, the question remains as to how there is a “reasonable fit” between advancing the State’s interest of reducing the number of drunk drivers on the road with removing those drunk drivers as a result of illegal police conduct by allowing certain people to challenge that conduct and not others. The simple answer appears to be that there is no reasonable fit. As such, Mr. Westra should have been allowed to challenge the stop of his vehicle in the administrative proceedings in order to avoid a substantive due process problem under Article 1, Section 9 of the Iowa Constitution.

B. Procedural Due Process Challenge.

“Procedural due process protections act as a constraint on government actions that infringes upon an individual’s liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L.Ed2d 18, 31 (1976). “A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty or property interest.” *Bowers*, 638 N.W.2d at 690; accord *Hernandez-Lopez*, 639 N.W.2d at 240. Accordingly, the first step in any procedural due process inquiry is the determination of “whether a protected liberty or property interest is involved.” *Bowers*, 638 N.W.2d at 691. Driver’s licenses are liberty or property interests that are protected by procedural due process. *Burson*, 402 U.S. at 539.

Upon determining that a protected interest is involved, the court must undertake an analysis that balances three factors to determine what process is due:

“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 requirement[s] would entail.”

Id. (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33 (1976)); accord *Hernandez-Lopez*, 639 N.W.2d at 240.

Applying the three factors set forth above, it is easy to conclude that Mr. Westra was denied due process by being precluded from challenging the stop of his vehicle in the administrative license suspension proceedings. First, the private interest involved is the taking of a persons ability to drive as a result of illegal police conduct. Second, the current procedure is ripe for “erroneous deprivation” under the Iowa Constitution because illegal police conduct can formulate the basis for a license suspension without a remedy to adequately address that wrong. Allowing a challenge to illegal police action in an administrative hearing would provide additional safeguards that would prevent the State from playing the games cautioned against in *Taeger* and will provide equal access to everyone to challenge a driver’s license suspension. Finally, as discussed *supra* there is no rationale argument that can be advanced that the procedure suggested by Mr. Westra would thwart the State’s interest or implement additional burdens to the Department especially in light of the legislatures enactment of Iowa Code Section 321J.13(6).

Conclusion

In order to uphold the integrity of the purposes of the exclusionary rule under the Iowa Constitution and to prevent substantive and procedural due process challenges under the Iowa Constitution, Mr. Westra’s license suspension should be reinstated because Officer Wilson lacked the legal authority to effectuate the stop of his vehicle.

Request for Oral Argument

Request is hereby made that, upon submission of this case, counsel for Appellee requests to be heard in oral argument.

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements.

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 6,533 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 Times New Roman in size 14 font.

/s/ Matthew Lindholm
Matthew T. Lindholm

December 20, 2018
Date

Attorney's Cost Certificate

I, Matthew T. Lindholm, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was \$0, and that amount has been paid in full by me.

Respectfully Submitted,

GOURLEY, REHKEMPER &
LINDHOLM, P.L.C.

By: /s/ *Matthew Lindholm*

By: Matthew T. Lindholm, AT0004746
440 Fairway Drive, Suite 210
West Des Moines, IA 50266
Phone: (515) 226-0500
Fax: (515) 244-2914
mtlindholm@grllaw.com
ATTORNEY FOR APPELLANT