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 REPLY BRIEF

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I, Matthew T. Lindholm, hereby certify that I electronically filed the attached Proof Reply Brief with the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, on December 20, 2018.

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Legal Argument

I. THE ISSUE OF WHETHER MR. WESTRA'S RIGHTS UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION WAS RENDERED MOOT GIVEN THE RECENT DECISIONS IN *RILEA* AND *WERNER*.

Given the Court's recent decisions in *Rilea v. Iowa Dept. of Transp.*, ___ N.W.2d___ (Iowa 2018) and *State v. Werner*, ___ N.W.2d ___ (Iowa 2018), the Department cannot in good faith contest the lack of statutory authority to stop Mr. Westra's vehicle thereby violating his constitutional rights to be free from unreasonable seizures. See *Werner*, ___ N.W.2d ___, (2018), (finding the DOT officer could not legally stop a vehicle for speeding and that the resulting evidence obtained from the stop should be suppressed).

Nevertheless, the Department continues to suggest that Officer Wilson's actions were justified under Chapter 321J. See Department's Brief P. 23 ("given officer Wilson's separate authority under Iowa Code Section 321J, DOT invites this Court to affirm Judge Gamble on this alternative ground…"). The same indistinguishable argument was raised and rejected in *Werner* where the State argued the stop was justified on the basis that his driver's license was suspended. The Court found there was "no indication Officer Glade knew or suspected Werner's driver's license had been revoked for operating while intoxicated when he made the August 18 stop." *Werner*, _____ N.W.2d ____. Similarly, there is no evidence Officer Wilson knew or suspected Mr. Westra was intoxicated at the time he effectuated the

stop in this case. As such, this court must conclude that Mr. Westra's constitutional right to be free from an unreasonable seizure under Article 1, Section 8 of the Iowa Constitution was violated.

II. FAILURE TO APPLY THE EXCLUSIONARY RULE UNDER ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION WOULD UNDERMINE THE PURPOSE OF THAT RULE AND THE IMPLIED CONSENT STATUTES.

The Department's real contention appears to best be summarized as "too bad so sad." In other words, although Officer Wilson violated Mr. Westra's constitutional rights which resulted in the loss of his license, he should not be entitled to have that wrong remedied. This position is contrary to each delineated purpose of the exclusionary rule under Iowa Constitution, it undermines the purposes and intent of the implied consent statutes, and creates a slippery slope for future breaches of the law to go without a remedy under the guise of the greater good.

a. Purposes of the exclusionary rule under the Iowa Constitution would be thwarted by accepting the Department's position.

The Iowa Supreme Court has determined that the exclusionary rule under the Iowa Constitution has three separate purposes which provide greater protections than the exclusionary rule under the United States Constitution. *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). Those purposes are (1) to deter unlawful police conduct, (2) "provide a remedy for constitutional violations" and (3) "protect the integrity of the

judiciary." Each of these purposes would be undermined if Mr. Westra was precluded from seeking reinstatement of his license as a result of an unconstitutional seizure.

First, refusal to apply the exclusionary rule in this instance would undoubtedly encourage police misconduct. In one breath, the Department contends that they should be allowed to use illegally obtained evidence in the driver's license suspension proceedings for the greater good of combating the holocaust on our highways. See Department's Brief P. 51. In the next breath the Department contends that is "insulting to the men and women of Iowa's law enforcement" to suggest that they would violate the rights of Iowa citizens in order to further this purpose. Department's Brief P. 38, 59, 60. These two contentions are at odds. Especially considering Officer Wilson was employed by the same agency responsible the adjudication of Mr. Westra's license suspension, and the same agency is suggesting that he should not have a remedy due to their employee's illegal conduct. See 1 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* §1.7(f) (5th Ed) (suggesting that the deterrence argument for application of the exclusionary rule in the administrative context "is most compelling when the administrative agency in question has an investigative function and investigative personnel of that agency participated in the illegal activity…")

Compounding the situation, is the imposition by the Department of a two-hundred dollar ($200) civil penalty and a twenty dollar ($20) reinstatement fee for each license suspension that gets imposed. See Iowa Code Sections 321.218A, 321.32A, and 321J.17(1) (all imposing civil penalties in order to reinstate a suspended or revoked license); See also Iowa Code Section 321.191(8) (payment of a $20 reinstatement fee is required following a suspension or revocation of a driver's license). This scenario is ripe for abuse thereby justifying the application of the exclusionary rule as a necessary checks and balance on the Department as well as other law enforcement officers.

Second, refusing to apply the exclusionary rule under the Iowa Constitution in this instance would undermine the purpose of "providing a remedy for constitutional violations." Mr. Westra is seeking is reinstatement of his driver's license and the removal of this violation from his driving record which was the result of unconstitutional police action. One of the vehicles for which he seeks that remedy is the exclusionary rule under the Iowa Constitution. Failing to apply the exclusionary rule would flatly ignore the remedial purpose of the exclusionary rule under the Iowa Constitution.

Finally, the refusal to apply the protections of the exclusionary rule under the Iowa Constitution would undermine the public's confidence in the integrity of the judiciary. Driver's license suspension proceedings are "quasi- judicial." See *Iowa*

Ins. Institute v. Core Group of Iowa Ass'n for Justice, 867 N.W.2d 58, 68 (Iowa 2015) ("Agencies assert their authority in a quasi-judicial way when deciding contested cases"). Moreover, the final decisions of agencies are subject to judicial review. See Iowa Code Section 17A.19. Application of the exclusionary rule certainly would bolster the publics' confidence in the judiciary because a mechanism would exist to protect the deprivation of a drivers license which stems from unconstitutional conduct. To conclude otherwise, the public's confidence in the ability of the judicial process to protect their interest would be sidelined.

b. The implied consent statutes were not developed with the intent to provide law enforcement unfettered authority to violate motorists' constitutional rights.

The Department has suggested that Mr. Westra "offers no explanation or citation to any Iowa authority calling for a different result under the Iowa Constitution" and "offers no Iowa Constitutional analysis tailored specifically to the implied consent setting involving motor vehicles." Department's Brief P. 49. This simply could not be further from the truth. For example, Mr. Westra cited the different purposes and protections of the Iowa Constitution compared to the federal counterpart in the initial briefing and why the Iowa Constitutional protections of the exclusionary rule should be applied in the current context. See Petitioner's Brief PP. 27-28. Moreover, much of Mr. Westra's argument centers on why the rationale of

Westendorf, an implied consent case, is no longer viable under the Iowa Constitution. See Petitioner's Brief PP. 27-31.

Although it is true, no Iowa case has expanded the protections of Article 1, Section 8 of the Iowa Constitution to driver's license suspension proceedings, it does not appear that anyone has attempted to do so. The Department's argument in this vein seems to suggest that because no case previously has addressed the applicability of the Iowa Constitution in a license suspension proceeding it should not be done now. If that were true, expansion of the law or modifications to the law through this court could never be accomplished.

Nevertheless, the protections of the Article 1, Section 8 of the Iowa Constitution have been applied in a civil context. See *In the Matter of Property Seized from Sharon Kay Flowers,* 474 N.W.2d 546 (Iowa 1991). See also *Atwood v. Vilsack*, 725 N.W.2d 641, 650 (Iowa 2006) (finding that the protections of Article 1, Section 8 apply to commitment hearings instituted through the Iowa Department of Corrections). Similarly, varying degrees of protections under the Iowa Constitution have been applied to actions of administrative agencies. See *Brakke v. Iowa Dept. of Natural Resources,* 897 N.W.2d 522 (Iowa 2017) (applying the taking provisions of Article 1, Section 18 of the Iowa Constitution to action by the Iowa Department of Natural Resources); *Fisher v. Bd. Of Optometry Examiners,* 510 N.W.2d 873 (Iowa 1994) (analyzing the due process protections of Article 1, Section

9 to administrative actions taken by the Board of Optometry Examiners); *Timberland Partners XXI, LLp v. Iowa Dept. of Revenue*, 757 N.W.2d 172 (Iowa 2008) (analyzing whether equal protection under both the Iowa and Federal Constitutional applied to the classification of apartments and condos by the Iowa Department of Revenue.); See also *LaFave*, *supra* (outlining many instances in which the exclusionary rule has been applied to administrative proceedings in various jurisdictions).

Most importantly however, the Department recognizes that the implied consent proceedings are an agreement between the motorist and the State whereby in exchange for the use of the roads, the motorist agrees to submit to chemical tests under the provisions of the implied consent statutes. See *State v. Hitchens*, 294 N.W.2d 686, 687 (Iowa 1980); Respondent's Brief PP. 50-51. However, no court has held that such an agreement allows law enforcement officers to disregard the confines of the Iowa Constitution to gain the benefit of those statutes. If the "agreement" between the State and the citizens of Iowa is to have any legitimacy, that agreement cannot unwittingly have the motorists exchange their constitutional rights for the ability to drive on the roads. See *C & J Fertilizer, Inc. v. Allied Mut. Ins. Co.*, 227 N.W.2d 169, 180 (Iowa 1975) ("standardized contracts…drafted by powerful commercial units and put before individuals on the 'accept this or get

nothing' basis, are carefully scrutinized by the court for the purpose of avoiding enforcement of 'unconscionable' clauses.").

The legislature surely never intended such a result nor does the law allow such a result. See *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013) (finding a parole contract which included a prospective consent-to-search provision did not constitute voluntary consent and waiver of their rights under Article 1, Section 8 of the Iowa Constitution); *Doyle v. Ohio*, 426 U.S. 610, 619 (1976) (finding that the due process clause prevented the use of a person's silence for impeachment purposes when there was explicit promise not to use the silence). By taking the Department's position to a logical conclusion, nothing would prevent a large scale dragnet by establishing road blocks in contravention to Iowa law for the specific purpose of detecting drunk drivers and subsequently revoking their license. The protections bestowed upon Iowans under Article 1, Section 8 must have more teeth than suggested by the Department otherwise the backbone and legal fiction of the implied consent statutes diminishes.

The Vermont Supreme Court addressed a similar argument in *State v. Lussier*, 757 A.2d 1017 (Vt. 2000). The court determined that the implied consent statutes presupposed a constitutional stop and therefore allowed motorists to challenge the loss of license in an administrative hearing by applying the exclusionary rule under their state constitution. Like Iowa, Vermont also declined to adopt the "good faith"

exception under their State Constitution because they "were unpersuaded by the cost-benefit analysis used by the United States Supreme Court." *Id*. citing *State v. Oakes*, 598 A.2d 119, 126 (Vt. 1991). The court made the following observations in reaching their conclusion: (1) "the State has not provided us with either empirical evidence or sound argument suggesting that application of the exclusionary rule would undermine the Legislature's intent to create a speedy and summary civil suspension system"; (2) "the public's interest in having strict police control over persons driving on our highways may not be satisfied at the expense of our constitutional right to be free from unbridled government interference in our lives, particularly considering that the State offers no empirical evidence suggesting that applying the exclusionary rule in civil suspension proceedings will have a deleterious effect on preventing the carnage caused by drunk drivers"; and (3) "the exclusionary rule is just as necessary to deter unlawful police conduct in the context of civil suspension proceedings as it is in related criminal DWI proceedings." *Lussier*, 757 A.2d at 1026.

Notably, the Vermont Supreme Court did not consider whether their exclusionary rule contained a remedial purpose or was designed to promote confidence in the judiciary thereby making the argument for application of the rule under the Iowa Constitution even stronger. Other states have also applied the exclusionary rule to license suspension proceedings. See *People v. Collins*, 506

N.W.2d 963 (Ill. App. 1987) (assuming without directly stating that the exclusionary rule applied in drivers license suspension proceedings); *Olson v. Commissioner of Public Safety*, 371 N.W.2d 552 (Minn. 1985) (exclusionary rule applied to prevented loss of license for unconstitutional stop in license suspension proceeding); *Williams v. Ohio Bureau of Motor Vehicles*, 610 N.E.2d 1229 (Ohio 1992) ("notwithstanding the argument that license suspension proceedings are civil and independent of any concomitant criminal proceedings, the court held that a valid arrest, including a constitutional stop, must take place before a refusal to permit chemical testing triggers a license suspension"); See also Petitioner's Brief P. 33 (citing additional cases from other states where the exclusionary rule was applied to drivers license suspension proceedings).

The purposes of the exclusionary under the Iowa Constitution should be advanced and not suppressed. Refusal to apply the exclusionary rule in this case would not only thwart the purpose of that rule but it would also undermine the backbone and implicit protections of the implied consent statutes. Thus, for the above reasons, and those set forth in Mr. Westra's original brief, the district court incorrectly concluded that the exclusionary rule under the Iowa Constitution is not applicable in driver's license suspension proceedings.

III. THE RESTRICTIONS CONTAINED IN IOWA CODE SECTION 321J.13(2), CREATE A SUBSTANTIVE AND PROCEDURAL DUE PROCESS PROBLEM UNDER THE IOWA CONSTITUTION WHEN A MOTORIST IS UNABLE TO CHALLENGE THE STOP OF HIS VEHICLE IN ORDER TO PREVENT THE LOSS OF HIS LICENSE.

Iowa Code Section 321J.13(2) limits a motorist's ability to challenging the loss of their license in a contested case hearing to (1) whether there was reasonable grounds to believe the person was operating while intoxicated; (2) whether the person refused to submit to the test or tests; (3) whether a test was administered and the results were over the legal limit for alcohol and (4) whether a test was administered and showed the presence of alcohol and another drug, or a controlled substance. On the other hand, Iowa Code Section 321J.13(6) opens the gauntlet for challenges to the loss of license as long as a parallel criminal charge is filed. The only barrier between the two avenues for relief is the filing of a criminal OWI charge. The dichotomy between these two avenues of relief following an unconstitutional seizure resulting in the loss of a driver's license is the focus of Mr. Westra's due process challenges (both substantive and procedural).

a. Substantive Due Process Argument Refined.

Mr. Westra does not contend that Iowa Code Section 321J.13(6) is unconstitutional as that statute is not implicated in these proceedings since no criminal OWI charge was filed. The central theme to Mr. Westra's due process challenge is that an illegal seizure occurred resulting in the loss of his license and he

lacks any viable remedy to restore him to the position he was in prior to the illegal seizure. Thus, whether analyzed under strict scrutiny or rational basis the system has deprived him of substantive due process.

i. Nature of the Right Involved.

The first step in a substantive due process challenge is to "determine the nature of the individual right involved." *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010). "No clear test exists for determining whether a claimed right is fundamental." *Planned Parenthood of the Heartland v. Reynold ex rel. State*, 915 N.W.2d 206, 233 (Iowa 2018). However, "rights and liberties which are 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' qualify as fundamental." *State v. Seering*, 701 N.W.2d 655, 664 (Iowa 2005). "History and tradition guide and discipline this inquiry but do not set its outer boundaries." *Obergefell v. Hodges*, 576 U.S. ___ , 135 S. Ct. 2584, 2589 (2015). Determination of whether a right is fundamental "requires the courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect." *Id.* Despite federal guidance, this court "jealously guard[s] it as our right and duty to differ from the Supreme Court, in appropriate cases, when construing analogous provisions in the Iowa Constitution." *Hensler v. City of Davenport*, 790 N.W.2d 569, 579 n.1 (Iowa 2010). The Iowa Constitution "recognizes the ever-evolving nature of society, and thus, our inquiry cannot be

cabined with the limited vantage point of the past." *Planned Parenthood*, 915 N.W.2d at 233.

The Department contends, and the district court agreed, that the applicable right involved is the privilege of driving and therefore only a rational basis is needed to surpass a due process challenge. See Ruling P. 12; App. 384; See also Respondent's Brief P. 61-65. This conclusion is incomplete. There is no question that the right to privacy including the right to be free from unreasonable searches and seizures is a fundament right. See *State v. Reiner*, 628 N.W.2d 460, 464 (Iowa 2001) (equating the same "fundamental right of privacy" under Article 1, Section 8 of the Iowa Constitution to the Fourth Amendment of the United States Constitution); See also Article 1, Section 9 of the Iowa Constitution (the fundamental liberties protected by the Due Process Clause of the Fourteenth Amendment include most of the rights enumerated in the Bill of Rights"). Similarly, there is no question this fundamental right was violated, and Mr. Westra suffered deprivation of his ability to legally drive as a direct result. See Werner, ___ N.W.2d ___, (2018). Thus, assessing this as strictly the loss of a privilege fails to account for the fundamental right to privacy that was violated in order to successfully complete the revocation of Mr. Westra's license.

"The Due Process Clauses are understood first of all to require that when the courts or the executive act to deprive anyone of life, liberty, or property, they do so

in accordance with established law." Richard M. Re, *The Due Process Exclusionary Rule*, 127 Harv. L. Rev. 1885, 1907 (2014) citing John Harrison, *Substantive Due Process and the Constitutional Text*, 83 VA. L. Rev. 493, 497 (1997). "This requirement that deprivation follow the rule of law is so fundamental that it is often forgotten." *Id*. The Department is asking this court to find that Mr. Westra was rightly deprived of his ability to legally drive even though the rule of law was not followed. Shifting the focus from the fundamental right that was violated to the deprivation that occurred, would be akin to patting the Department on the back for committing a Constitutional violation.

Assuming *arguendo* that the right to privacy is not at issue for purposes of a due process analysis, Mr. Westra also contends that his ability to legally drive is fundamental under the Iowa Constitution. This court has never outwardly addressed to what extent a person's ability to drive implicates the Iowa Constitution as a fundamental right however, driving has been referred as a privilege and not a right. Nevertheless, there is certainly a colorable argument that a driver's license should be considered a fundamental right.

For example in *Gilchrist v. Bierring*, 14 N.W.2d 724, 732 (Iowa 1994), while addressing the revocation of a State issued cosmetology license, it was determined that "where the state confers a license to engage in a profession, trade or occupation, not inherently inimical to the public welfare, such license becomes a valuable

personal right which cannot be denied or abridged in any manner except after due notice and fair and impartial hearing before an unbiased tribunal." Similarly, the Iowa Supreme Court recently equated the right to make a living with the right to drive by stating, "we recognize that unlike the loss of the ability to drive upon public road, the loss of the ability to boat on state waterways ordinarily does not implicate the fundamental right to earn a living." *State v. Pettijohn*, 899 N.W.2d 1 citing *Gilchrest*, 14 N.W.2d at 732. See also *Bell v. Burson*, 420 U.S. 535, 540 (1971) ("suspension of issued licenses involves state action that adjudicates important interests of the licensees").

It is difficult to say in this day and age that the ability to drive is not "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." In fact, Mr. Westra's license was necessary for his continued employment at a car dealership. See Stay Proceedings Tran. PP. 8-9; App. 398-399 (testimony as to how Mr. Westra's driver's license was imperative to his job) Additionally, according to the Iowa Department of Transportation, the number of licensed drivers in Iowa has increased every year since 2007 except for one. Certainly, Iowan's believe the right to drive is fundamental given the sheer number of licenses issued compared to the overall population in Iowa. Moreover, the legislature has apparently recognized the need for the general public to drive by relaxing the hard suspension periods before being eligible to obtain a temporary restricted license. Iowa Code

Section 321J.20 as amended by H.F. 2338 Accordingly, whether regarded as a property right, a right to earn a living, a separate and distinct right, or an amalgamation of rights, the ability to drive should be identified as a fundamental right under the Due Process Clause of the Iowa Constitution.

ii. Scrutiny Applied.

The second step in analyzing a substantive due process challenge to government action is to determine "the appropriate level of scrutiny to apply." *Hensler*, 790 N.W.2d at 580. "If government action implicates a fundamental right", strict scrutiny applies and the court must determine whether the government action is "narrowly tailored to serve a compelling government interest." *Id*. If the right at issue is not a fundamental right, the rational basis test is applied and the court considers whether there is a "reasonable fit between the government interest and the means utilized to advance that interest." *Id*.

As discussed *supra* whether cloaked as the fundamental right to privacy (i.e. the right to be free from unreasonable searches and seizures) or as a fundamental right to drive, strict scrutiny should apply. Mr. Westra acknowledges that the state has a "compelling interest" in combating drunk driving. However, Mr. Westra contends that combating drunk driving by trampling his right to be free from unreasonable seizures is not "narrowly tailored" to furthering that interest.

Alternatively, Mr. Westra has alleged that even if a fundamental right is not involved, substantive due process should prevent the loss of his license under a rational basis test. There simply is no justifiable basis for concluding that an unconstitutional seizure which results in a license suspension should be permitted for any reason under the Iowa Constitution. Justifying the loss of the legal ability to drive which stems from the violation of a constitutional right obliterates that particular constitutional protection.

Whether tethered to a strict scrutiny analysis or a rational basis analysis, the Department has not advanced any influential argument that the confines of Iowa Code Section 321J.13(2) should prohibit a motorist from being able to challenge the basis for the stop in the license suspension proceedings. The Department contends that combating drunk driving is paramount to individual liberties guaranteed by the Iowa Constitution. However, the enactment of Iowa Code Section 321J.13(6) suggests that the legislature values the rights of Iowan's over combating drunk driving with illegally obtained evidence. The Department's leap is even more difficult to comprehend when considering that the statutory protections contained in Iowa Code Section 804.20 apply to criminal and administrative license proceedings equally.

Equally unpersuasive, is the Department's argument that the ability to challenge the stop will place an undue burden on the administrative process. First,

the officer who stopped the motorist is often the same officer who invoked implied consent so there would be very little additional officer resources utilized. See *Bell v. Burson*, 402 U.S. 535, 541 (1971) (rejecting the argument that increased costs and administrative burdens should preclude allowing a motorist a license suspension hearing). Second, there is nothing in the record or otherwise to suggest that ALJ's are less capable of deciding constitutional issues than they are statutory issues. Third, the applicability of Iowa Code Section 804.20 to both the criminal and administrative process undermines any argument that this new or additional basis for challenge would overburden the administrative hearing process. Finally, the enactment of Iowa Code Section 321J.13(6) effectively removes any significant distinctions between the administrative and criminal avenues for protecting a license as a result of illegal police conduct.

b. Procedural Due Process Argument Refined.

Whether regarded as fundamental or not, "suspension of issued licenses involves state action that adjudicates important interests of the licensees" and cannot "be taken away without that procedural due process required by the Fourteenth Amendment." *Bell*, 402 U.S. at 540 (1971). Due process applies because "relevant constitutional restraints limit sate power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege.'" *Id.* "A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due

process in every case." *Id*. Similarly, "the hearing required by the Due Process Clause must be 'meaningful.'" *Id.* at 541.

In determining what process is due, the court applies the three-part test laid out in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The first step requires a determination of the private interest affected by the official action. *Id*. Contrary to the ruling on judicial review, the private interest that was affected by the official action was the inability to challenge the loss of Mr. Westra's license based upon an unconstitutional seizure. This interest was not adequately protected by having an "opportunity to challenge the seizure in his criminal proceedings" because the challenge in the criminal case did not rectify the loss of license given that the criminal charge was not an OWI. Thus, the court's conclusion in this regard was illusory.

Analyzing the second factor which is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards" favors Mr. Westra's position as well *Id*. Clearly there was "erroneous deprivation" so far as constitutional constraints should limit the Department's ability to invoke the implied consent statutes. Without such constraint, the implied consent statutes cross the very thin edges of acceptable due process because it undermines the backbone of those statutes. See Petitioner's Reply Brief Supra PP. 16-18. Additionally, the "probable value" of additional safeguards

would undoubtedly help prevent the loss of a motorists' license stemming from an unconstitutional seizure.

Finally, "the fiscal and administrative burdens that the additional or substitute procedural requirements would entail" are relatively non-existent. A motorist already has the unfettered ability to subpoena any officer involved to the administrative hearing and is entitled to discovery. Iowa Code Section 17A.13. Likewise, there is no evidence to suggested that allowing a constitutional challenge in this case or any other for that matter would create any additional administrative or financial burden. No such burden has been imposed when this court allowed challenges pursuant to Iowa Code Section 804.20 in license suspension hearings.

When applying the significance of a driver's license, to the other license protection statutes, it appears that limits placed on a motorists' ability to challenge the loss of their license pursuant to Iowa Code Section 321J.13(2) runs afoul of procedural due process. This is especially true when considering that the simple act of filing a criminal OWI charge affords a motorist more ways to protect their license. Thus, procedural due process under the Iowa Constitution should allow a motorist to challenge the stop of his vehicle in license suspension proceedings.

Conclusion

In light of the preceding arguments, Mr. Westra asks that his driver's license be reinstated under the protection of the Iowa Constitution.

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/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,

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