IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 17-1489

CITY OF DES MOINES, IOWA,
Appellant/Cross-Appellee,

vs.

REUVEN WEIZBERG and
DAVID PETER VENG-PEDERSEN, JACOB PATRICK DAGEL
Appellees/Cross-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE LAWRENCE MCLELLAN

FINAL BRIEF FOR APPELLANT-CITY OF DES MOINES

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I. Routing Statement

It is appropriate that this case be retained by the Iowa Supreme Court due to substantial Constitutional questions as well as questions of first impression.

II. Statement Of The Case

Class Plaintiffs ("Plaintiffs") sued the City of Des Moines, Iowa ("the City") and Gatso USA, Inc. ("Gatso"), claiming the City's Automated Traffic Enforcement ("ATE") system was unconstitutional and legally defective in other ways. All claims against Gatso were dismissed through a motion for summary judgment. The City of Des Moines initially filed a motion to dismiss all claims. The district court dismissed all claims except one. The sole remaining issue was one of procedural due process; specifically, whether the City's offer of an administrative opportunity to be heard as an additional option to the state's statutory structure for challenging a citation in district court offends due process. The Class in this action was defined as follows:

> Any vehicle owner who received a NOV between December 11, 2013 and the present based upon a claim of speeding from one of the speed cameras mounted at the I-235 eastbound location and who appealed the decision, went through the administrative process, was adjudicated liable and ordered to pay a penalty and did not pursue a district court action.

Both parties filed for summary judgment on the remaining issue of procedural due process. The district court, deviating from previous persuasive federal decision, ruled for summary judgment in favor of the Plaintiffs without

engaging in a full procedural due process analysis. The stated reasons for doing so were two-fold: (1) the federal courts did not view this question in light of Iowa cases about cities following ordinances the way it did; and (2) the federal court did not consider "facts" about perceived voluntariness of the administrative process. This timely appeal followed.

III. Statement Of The Facts

The City of Des Moines has an ordinance governing the use of ATE devices. [App. 356]. Each Plaintiff was given Notices of Violation (hereinafter "NOV") citing driving in excess of the posted speed limit at I-235 Eastbound, 4700 Block. [App. 357-391]. Reuven Weizberg received three such citations. [App. 357-376]. The first (#013.0000179101) was dated May 1, 2015 at 9:51 a.m., the second (#013.0000227031) was dated May 13, 2015 at 11:07 a.m., and the third (#013.0000229771) was dated May 14, 2015 at 1:18 p.m. [App. 357-376]. David Veng-Pedersen received one citation (#013.0000203631) dated May 7, 2015 at 2:31 p.m. [App. 377-384]. Likewise, Jacob Dagel received one citation (#013.0001992361). [App. 385-391]. His was dated August 17, 2016 at 7:52 p.m. [App. 385-391]. Each NOV contains the following language:

> To Contest This Violation: You have the right to contest this violation at an administrative hearing or by mail. Before contesting your violation it is recommended that you review the local ordinance, images and the actual recorded video of the infraction to determine if you have a valid defense supporting dismissal of this citation.

> Note: ***If the administrative hearing does not resolve the issue, a civil infraction (lawsuit) may be requested to be filed in state district court and a court hearing date will be scheduled***. Additional costs including an $85.00 filing fee, and other court costs will be assessed if you are found liable or you pay the civil penalty before the court hearing date. If you fail to appear for the court hearing, you will be responsible for paying the fine and court costs. If you are found not liable, the fees will be paid by the city. ***Alternatively, you may request a civil infraction (lawsuit) in lieu of an administrative hearing***. [Emphasis added]. [App. 357-391].

Each Plaintiff contested the NOV through the administrative process. Reuven Weizberg requested review of his three citations. On May 29, 2015, he made a written request challenging his first citation; then on June 22, 2015, he made written request challenging his other two citations. [App. 357-376]. David Veng-Pedersen made a written request to challenge his citation on June 15, 2015. [App. 377-384]. Jacob Dagel made his written request for review on September 29, 2016. [App. 385-391]. Based on their requests for review, each of the named Plaintiffs was provided a contest acknowledgment that set administrative hearing dates, times and procedures. [App. 357-391]. The administrative hearing was a supplemental and voluntary opportunity to be heard that was not codified in the City's ordinance. [App. 356].

A hearing officer considered "motions, evidence and arguments presented" by the Plaintiffs. [App. 357-391]. Each of the Plaintiffs was provided a notice of decision. [App. 357-391]. Each of the Plaintiffs was found liable for an ATE

violation. [App. 357-391]. Each notice of decision included the following language:

> Right of Appeal: ***If you want to appeal the Hearing Officer's decision, within 10 days of the date of this ruling you may request that a civil infraction (lawsuit) be filed against you in Polk County District Court***. An $85 filing fee and other court costs plus the fine amount will become a judgment against you if the Court finds you liable for the violation. Your request to be sued must be mailed to:
>
> Des Moines Police Department
> Traffic Commander
> 1222 24th Street
> Des Moines, IA 50311

[Emphasis added]. [App. 357-391].

None of the named Plaintiffs requested a civil infraction be filed in lieu of or in addition to the administrative process. [App. 357-391]. To date, Plaintiffs Weizberg and Veng-Pedersen have not paid the civil penalties associated with the above-noted citations. (Petition). Plaintiff Dagel paid the civil penalty and wrote on his payment instrument, "Paid in protest." (Petition).

V. Argument

Procedural due process is not violated when the City of Des Moines provided a supplemental and voluntary opportunity to be heard, in addition to the opportunity to go to district court to litigate automatic traffic enforcement tickets.

A. Issue Preservation

This issue was preserved for appeal through arguments set forth before the district court and the order that issued therefrom.

B. Standard of Review

Generally, the Court reviews a district court's summary judgment ruling for the correction of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). However, since this case revolves around Constitutional arguments, the Court performs a de novo review. *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 339 (Iowa 2015). In doing so, the Court independently evaluates the totality of the circumstances. *State v. Shanahan*, 712 N.W.2d 121, 131 (Iowa 2006).

C. Discussion

1. The District Court Erred by Failing to Engage in a Full Procedural Due Process Analysis.

The district court's order of summary judgment in favor of the Plaintiffs stated,

> Typically, determining whether a given process provides constitutionally satisfactory procedural safeguards is a matter of balancing the interests of the parties involved, as well as the risk of

> erroneous deprivation [footnote omitted]. However, in this instance, it is unnecessary to engage in this balancing test, because the administrative hearing process failed to conform to the process enacted by the city council in its Municipal Code and outlined by the legislature under the municipal infraction statute. [App. 511].

Otherwise stated, any additional opportunity to be heard by the City—whether informal negotiation, mediation, or this administrative process—provided in addition to a district court proceeding violates due process simply because those additional options aren't spelled out in the ordinance. This contradicts the position posited in the United States District Court for the Northern District of Iowa, where it asserted that a government entity's regulations do not set the legal standard for procedural due process, and their mere violation does not constitute a procedural due process violation. *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 846–47 (N.D. Iowa 2015), aff'd in pertinent part, rev'd in part sub nom. *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016). While the holding in that court is not binding on this Court, the City asserts it is the better reasoned and sounder legal premise over that of the Iowa District Court, and should be adopted by this Court.

a. <u>The District Court erred by relying on antiquated and dissimilar Iowa cases</u>.

The district court's position was based on a broad stroke misstatement of principle from several antiquated cases without looking at the context of those cases. The principle the district court articulated was "cities must obey the laws

they enact" related to process, and if they don't—in this case by adding additional process—then the City has violated due process. When one parses those cases in detail, as is done below, each of them is not only distinguishable but stands for something more nuanced than the district court's statement. None of them stand for the premise that when a city codifies one process that it cannot offer supplemental opportunities to be heard on an issue.

In *McManus v. Hornaday*, the City of Keokuk adopted an ordinance related to the grading of streets in 1887. In 1893, the city council passed a resolution changing the grading requirements without the rescission of the ordinance or passage of a new ordinance. The immediate effect of the resolution was to change grades of a given street and pass the costs on to abutting owners without the notice that would have been given had a new ordinance been passed. Citizens were given *less notice and process* through the city's action and the Court reversed the tax to the owners. *McManus v. Hornaday*, 68 N.W. 812, 814 (1896). The court, while never mentioning due process made much of the concept that when a certain mode is promised by a city, it cannot later usurp the former by using a lesser mode.

In *Logan v. Pyne*, the City of Dubuque adopted and enforced an ordinance that granted one company the exclusive right to operate as a taxi business for a period of five years. 43 Iowa 524 (1876). The case arose when another company began operating a taxi business in Dubuque, as well. The court articulated the legal

question of whether a City has a right to create a monopoly. In answering that question, it looked to Dubuque's charter, which gave a general grant of authority to license, regulate and tax vehicles. The court found that a general grant does not confer authority to create a monopoly. *Id*. at 526. There is no question that cities have the general authority to regulate speed through the use of automated traffic cameras. *City of Davenport v. Seymour, 755 N.W. 2d 533 (Iowa 2008).* As such, this case is of no value to a meaningful analysis.

In *Ryce v. City of Osage*, the city attorney sued the city over his pay, which was fixed by ordinance at $100 per year when he began his tenure. 55 N.W. 532 (1893). By way of resolution, the city council attempted to rescind the pay portion of the ordinance by reducing his annual salary while the city attorney was in office. Among other conclusions, the court found in pertinent part, that the ordinance fixed the pay rate and allowing for ways to increase or decrease salary without going through the higher process of creating ordinance would lead to abuses. *Id*. 533-534. Much like the *McManus* case, the city abridged process which was ultimately not condoned by the court.

In *G.W. Mart v. City of Grinnell*, a theater owner sought injunctive relief against the city for anticipated penalties. 187 N.W. 471 (Iowa 1922). G.W. Mart owned theaters and wanted to operate them on Sundays, which was prohibited by ordinance. Ultimately, the court found that injunctive relief wasn't appropriate

because there was a speedy remedy at law; G.W. Mart could challenge enforcement when and if it occurred. *Id*. at 473. In dicta, there was discussion about cities being prohibited from encroaching on state legislation. *Id*. There was also dicta to indicate that "side deals" could not be made with city council outside of the ordinance to effect estoppel from the city's enforcement so long as the ordinance remained unchanged and in effect. *Id*. Given the court explicitly stated that it was not addressing any of the substantive arguments, there was nothing in the *G.W. Mart* case that helps the analysis herein.

The last of the Iowa cases relied upon by the district court was *Cascaden v. City of Waterloo*, where by ordinance the city was divided into four political wards under which city officials were individually elected to represent each ward. 77 N.W. 333 (Iowa 1898). The city council voted by resolution to create an additional ward. The court found that an ordinance cannot be repealed or substantively changed by way of resolution. Importantly, the court noted that a resolution provides less notice than an ordinance so the city erred in altering the substance of the ordinance in a way that provided less process than was guaranteed. *Id.* at 335.

b. <u>The District Court erred in relying on a Nebraska case that is wholly dissimilar to this case.</u>

The final case that moved the district court to find the City of Des Moines' extra process had offended procedural due process was *Blanchard v. City of Ralston*. 559 N.W. 2d 735 (Nebraska 1997). Ms. Blanchard owned a home in

Ralston, Nebraska, but lived elsewhere. In February 1991, neighbors of the empty property complained of a hissing noise and police discovered a water pipe leak and there was the presence of mildew and fungus. In March 1991, the mayor requested an inspector assess the property; on April 25, 1991, the inspector entered the home and declared it a health hazard. This culminated in a condemnation and demolition notice being posted to the door that allowed for appeal within ten days, despite the demolition being scheduled for three days later. The owner was never sent notice of any of these actions, despite her address being known or able to be known by Ralston officials.

Through word of mouth, the owner learned of the proceedings and appealed. A hearing was scheduled on May 16, but demolition had already begun. Not surprisingly, the Nebraska court found this a violation of due process, since even in an emergency, Ralston City Code requires reasonable notice be given to the owner. Again, the district court is relying on a case where a city disregarded its ordinance and provided less process than it promises.

c. <u>The District Court's use of antiquated and off-point case law to support its determination to eschew a full due process analysis was in error</u>.

None of these cases answer the question of whether a city may provide additional options or process to resolve an automated traffic enforcement ticket, or

any other dispute with a municipality. The City of Des Moines ordinance, at the time these tickets were issued[1], stated:

> If a recipient of an automated traffic citation does not pay the civil penalty by the stated due date or request a trial before a judge or magistrate, a municipal infraction citation will be issued to the recipient by certified mail from the police department. Said municipal infraction citation will result in a mandatory court appearance by the recipient as well as imposition of state mandated court costs if a finding of guilty is made by the court. DMMC 114-243(d)(3) (2016), [see App. 356].

To follow the district court's theory, when a city lists one procedure for resolution, that procedure is to the exclusion of all other potential resolutions. If that were the case, the City could not plea bargain because that would be something other than a full district court hearing, which would accordingly violate procedural due process. The City could not review the facts and circumstances and choose not to prosecute, because that would accordingly violate procedural due process. The City could not take a call and listen to the facts and circumstances of someone who got an ATE ticket and choose not to prosecute, because that would accordingly violate procedural due process. It would lead to absurdity and impracticality to read this ordinance to mean nothing less than mandatory prosecution is appropriate. It is yet another level of absurdity to equate other

[1] This ordinance has since been amended to include reference to Chapter 3 which is the administrative hearing process.

resolution opportunities, in addition to district court litigation to be a violation of procedural due process.

This critical point was understood by the United States District Court for the Northern District of Iowa when it stated, "a government entity's regulations do not set the legal standard for procedural due process, and their mere violation does not constitute a federal due process violation." *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 846–47 (N.D. Iowa 2015), aff'd in pertinent part, rev'd in part sub nom. *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016). The Iowa District Court erred in its failure to heed this statement and in failing to engage in procedural due process analysis.

2. <u>A Full Due Process Analysis Demonstrates that the City of Des Moines' Supplementary and Voluntary Administrative Hearing Process Comports with Procedural Due Process</u>.

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. Similarly, the United States Constitution's Due Process Clause states, "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Iowa courts deem the federal and state due process clauses to be identical in scope, import, and purpose. *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 690 (Iowa 2002). "The requirements of procedural due process are simple and well established: (1) notice; and (2) a meaningful

opportunity to be heard." *Blumenthal Inv. Trusts v. City of W. Des Moines*, 636 N.W.2d 255, 264 (Iowa 2001).

Procedural due process analysis examines the private interest that will be affected by the official action; 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 the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail. *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 145 (Iowa 2013), citing *Mathews*, 424 U.S. at 335.

Iowa has adopted the federal courts' balancing test in assessing what process is due. *Mathews v. Eldridge*, 424 U.S. 319, 332 (Iowa 1976).The Court considers the following 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.

Jones v. Univ. of Iowa, 836 N.W.2d 127, 145 (Iowa 2013), citing *Mathews*, 424 U.S. at 335. "No particular procedure violates [due process] merely because

another method may seem fairer or wiser." *Bowers*, 638 N.W.2d at 691, quoting from 16B Am.Jur.2d *Constitutional Law* § 909, at 500 (1998).

The undisputed facts show notice and process were present. The remaining question is whether the process—meaning the notice and opportunity to be heard—met the threshold of what is due. Plaintiffs argued below that the very presence of the additional opportunity to be heard, and the notice thereof, thwarted or deprived individuals of direct access to the district court. That is the framework for the Plaintiffs' argument that the City deprived them of a property interest and that the deprivation was without sufficient process. *Krentz, v. Robertson*, 228 F.3d 897, 902 (8th Cir. 2000). This argument failed before federal courts and must fail here, as well.

Contextually, the point at which the analysis must begin is when the driver got the NOV. It is important to distinguish that the NOV is not the same as a municipal infraction case. A municipal infraction case occurs when the City of Des Moines files a lawsuit against the vehicle owner. Prior to that, the NOV advises vehicle owners of options available including, paying the penalty, attempting resolution through an administrative hearing, and having the City file the municipal infraction case with the district court. [App. 357-391]. This is consistent with the City's ordinance, which states:

> Municipal infractions may be initially brought upon simple notice and if the person charged admits the violation, upon payment of the penalty to the city treasurer and the performance of any other act required by law to be performed, such person shall not be further prosecuted or assessed any costs or other expenses for such violation, and the city shall retain all penalties thus collected. Where a municipal infraction is not admitted upon simple notice by the person charged or where the person charged fails to perform any other act required to be performed, or both, an action seeking a penalty shall be brought in the state district court. Any action seeking a penalty for a municipal infraction, with or without additional relief, may be initially brought in the state district court.
>
> This section does not impose a duty to initially charge all municipal infractions upon simple notice. Municipal infractions that are not brought upon simple notice may be brought pursuant to Section 364.22 of the Iowa Code, and the civil citation shall serve as notification that a civil offense has been committed. DMMC 1-15(e), [see App. 527].

Further, if a person chooses to go through the administrative process and that person is still aggrieved, he is given another written notice that again explains the right to access the district court through a municipal infraction case filing. [App. 357-391].

a. <u>The Vehicle Owners' Private Interests are Nominal.</u>

Applying the first prong of the Mathews test, the City concedes the Plaintiffs have a property interest in the $65.00 citation issued under the ATE system. *Shavitz v. City of High Point*, 270 F.Supp.2d 702, 709 (M.D.N.C. 2003) (concluding a $50 fine resulting from an ATE system constitutes a legitimate property interest for purposes of due process). However, "a civil fine between $25 and $750, although certainly a property interest protected by the Due Process

Clause, is not a particularly weighty property interest. *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 846–47 (N.D. Iowa 2015), aff'd in part, rev'd in part sub nom. *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016), citing *Goldberg v. Kelly,* 397 U.S. 254 (1970) (applying procedural due process analysis to termination of a person's welfare benefits); *Arnett v. Kennedy,* 416 U.S. 134 (1974) (applying procedural due process analysis to termination of a public employee following alleged misconduct); *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532 (1985) (same); *Little v. Streater,* 452 U.S. 1 (1981) (applying procedural due process analysis to government payment to indigent defendants in paternity cases); *Morrissey v. Brewer,* 408 U.S. 471 (1972) (applying procedural due process analysis to persons alleged to have violated the terms of their probation or parole). Stated plainly, as to the first prong of the Mathews analysis, there is a nominal property interest at stake for the Plaintiffs.

b. <u>There is no Risk of Erroneous Deprivation.</u>

Under the second factor, the City's ATE ordinance does not risk erroneous deprivation. The Plaintiffs have access to district court, which they appear to argue is the ultimate process "due" as set forth in Iowa Code 364.22(6). In Des Moines, the ordinance sets forth the right to district court as do the NOVs. Since that is available, there is no risk of erroneous deprivation. Adding an administrative

opportunity to be heard as an alternative resolution option does not detract from the fact that a district court action is available.

Here it is important to address the second crux of the district court's divergence from the federal courts' position. The district court indicated that because the case posture was in summary judgment and that there were undisputed facts in the record, it was in a different position than the federal courts, with regard to three particular facts about voluntariness. In essence, the district court found that the City's administrative opportunity to be heard was perceived as the only way to contest a violation. In support of this, it pointed to three paragraphs listed in the Plaintiffs' Supplemental Statement of Undisputed Facts, ¶¶ 17, 26, and 38. [App. 509].

Looking at Plaintiffs' Supplemental Statement of Undisputed Facts ¶17, it states:

> Mr. Weizberg made phone calls to the Des Moines Police Department and Traffic Violations Bureaus to ask about options, and learned that he had to proceed through the administrative hearing process. [App. 440].

That directs the reader to Ex. 5, Affidavit of Reuven Weizberg. There is no ¶27 in the affidavit of Weizberg that accompanied the Plaintiffs' Motion for Summary Judgment. [App. 467-468]. There is no apparent other paragraph in the Weizberg affidavit that speaks to ¶17 of the Plaintiffs' Supplemental

Statement of Undisputed Facts. This may have been a filing error of the Plaintiffs, but nevertheless, the statement is not supported by affidavit. It should be given no weight.

Looking at Plaintiffs' Supplemental Statement of Undisputed Facts ¶26, it states:

> Mr. Veng-Pedersen believed that the allegation was in error; he went to the website that the Notice of Violation referred him to and called the telephone number listed on the page; ***the person to whom he spoke directed him that he must contest the matter in-person at an Administrative Hearing***, and, then, gave very limited options for scheduling the same. [Emphasis added]. [App. 472].

The reader is directed to paragraphs 14 and 15 of Exhibit 6, affidavit of Mr. Veng-Pedersen. For context, the City will also provide paragraphs 12-15.

> 12. The Notice of Violation referred me to a website. I went to that location.
> 13. The website instructed me that if I wanted to challenge the alleged Violation I needed to attend an administrative hearing in-person.
> 14. I was required to call a toll-free number to schedule an appointment to contest the violation through the administrative means.
> 15. I called the number supplied on the webpage. That person gave me very limited options as to when I could contest the violation.

[App. 472]. The Plaintiffs' Supplemental Statement of Undisputed Facts ¶26 indicates that a person told Veng-Pedersen that he had to go through the administrative process. [App. 442]. This is refuted by his affidavit. It doesn't appear, from his affidavit, that he asked anyone about the other option to contest

which was clearly indicated on NOV. At worst, there were mixed messages Veng-Pedersen got between the NOV and the website and he never clarified that with a person. It is not accurate to state that he was told by a person that he had to engage in the administrative process.

Looking at Plaintiffs' Supplemental Statement of Undisputed Facts ¶38, it states, in pertinent part:

> Mr. Dagel was informed on the Notice of Violation document that he could contest the violation "by an administrative hearing or by mail." (*Id.*, ¶12).

[App. 445]. The reader is directed to paragraph 12 of Exhibit 7, affidavit of Mr. Dagel. It states,

> 12) The Notice of Violation informed me that I could contest the alleged Violation "by an administrative hearing" which could be in-person or "by mail."

[App. 475]. Here, for the first time, we have a near-identical description of the content of the affidavit, which provides a portion of what was written on Mr. Dagel's NOV. Fortunately, his actual NOV is also in the record. It states:

> You have the right to contest this violation at an administrative hearing or by mail. Before contesting your violation it is recommended that you review the local ordinance, images and the actual recorded video of the infraction to determine if you have a valid defense supporting dismissal of this citation.
>
> Note: If the administrative hearing does not resolve the issue, a civil infraction (lawsuit) may be requested to be filed in state district court and a court hearing date will be scheduled. Additional costs including an $85.00 filing fee, and other court costs will be assessed if you are

> found liable or you pay the civil penalty before the court hearing date. If you fail to appear for the court hearing, you will be responsible for paying the fine and court costs. If you are found not liable, the fees will be paid by the city. Alternatively, you may request a civil infraction (lawsuit) in lieu of an administrative hearing.

[App. 386]. Mr. Dagel's statement is undisputed, as far as it goes. The first part of the notice says that he could have an administrative hearing or he could contest the violation by mail. It is also undisputed that there is more to the NOV than just that. To the extent those two items are at odds, then there is a disputed material fact.

The district court relied on the Plaintiffs' Supplemental Statement of Undisputed Facts, not the actual facts as asserted through the affidavits. It accepted what amounted to conclusory statements, paraphrases or inaccurate restatements attributed to the affiants as fact, rather than looking at the facts as actually offered by the affiants. Using that faulty information, the district court found a lack of voluntariness to the administrative process. That was a significant error.

In sum, the affiants offered the following: the website directed me to contact a toll-free number to set up an administrative hearing, the person I talked to offered limited dates for a hearing, my notice said I could contest by an administrative hearing or by mail. All of the Plaintiffs agree that they got a NOV and the actual language of the NOV is undisputed. Their purported belief that the administrative process was mandatory and singular is not supported by the affidavits, nor is it particularly relevant given the undisputed fact that they were all on actual notice

that they could go to district court in lieu of or in addition to an administrative opportunity to be heard.

Additional process does not violate procedural due process. The assertion that a person's private interest in $65 might be erroneously deprived by having access to informal resolution and a district court proceeding is illogical. This process is not less, it is more; and the federal courts have consistently found this to harmonize with procedural due process standards.

Further, the argument that only codified processes are acceptable is unsupported by any legal authority. Nowhere in any of the Plaintiffs arguments have they offered statute, ordinance, or case law that supports the principle that the City may not engage in an informal resolution process, in addition to what is offered by the statute, unless it is codified by ordinance. The district court missed the mark as well by interpreting cases that say a City can't provide less process than what is codified to mean that a city can't provide more process than what is codified.

To the contrary, the United States Court of Appeals for the Sixth Circuit has provided an opinion that is helpful to the analysis here. *Silvernail v. County of Kent*, 385 F.3d 601 (2004). While not binding on this court, federal cases, foreign state cases, and other persuasive authorities can provide useful guidance. *State v. Sweet*, 879 N.W.2d 811, 832 (Iowa 2016), citing *State v. Short*, 851 N.W.2d 474,

481 (Iowa 2014); *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010). In the *Silvernail* case, a county assessed a penalty to individuals who executed bad checks. *Silvernail*, 385 F.3d at 603. In essence, it was a county infraction that came with a monetary penalty. The county contracted with a private agency to collect the fee. *Id*. It did so, not under its own ordinances, but based on local township code and state law regarding bad checks. *Id.* The process provided was a written "due process" notice demanding payment of the check, fees and a $25 government assessment payable to the county. *Id*. There was no notice of any method for appealing the decision, however, there was a phone number listed for "questions regarding this letter or the amount due." *Id*. at 603-604. The court found this to be sufficient process. Specific to the second prong of the Mathews test, the court stated that due process was satisfied because being provided with a phone number was sufficient to provide opportunity to grieve the decision. *Id*. at 605. None of this was codified in the county ordinance. There were state proceedings, both civil and criminal that could have been pursued by the county in the Michigan district court. Nevertheless, the Sixth Circuit found this practice to satisfy due process.

Not only does this make good legal sense, that approach represents good public policy. There are hundreds of interactions between a municipality and citizens that impose requirements, actions and financial consequences. It is in the interest of citizens that not every one of these interactions forces them into the cost

and consequence of district court if they choose to avail themselves of informal resolution—especially when a person isn't deprived of the statutory infraction process. The United States District Court for the Eighth Circuit upheld the system in Des Moines and in doing so articulated that the differences in the Des Moines ordinance (not outlining an administrative process) from the Cedar Rapids ordinance (outlining an administrative process), are "immaterial" because "both ordinances offer access to the district court." *Brooks v. City of Des Moines*, 844 F.3d 978, 979-980 (8th Cir. 2016). That is where the rubber hits the road in this analysis; the process in Des Moines passes the second prong of the Mathews test by ensuring that the right to proceeding in district court is known and available to vehicle owners.

c. The Government Interest Provides for Additional Process, Which Satisfies the Third Prong of Procedural Due Process Analysis.

A municipality could simply force every one of these violations to be tried in district court, resulting in costs and judgment for vehicle owners. The City of Des Moines provides an alternative in the government interest of allowing an avenue for individuals to avoid being "further prosecuted or assessed any costs or other expenses for such violation." DMMC 1-15(e), [see App. 527]. It is a no-cost, no-risk method for resolution that does nothing to diminish the statutory right to a district court hearing. That is a strong governmental and public interest.

As to the burdens of alternate or substitute process, the "Plaintiffs do not appear to propose any substitute procedure that differs from what Defendants provide. Indeed, one who receives a Notice of Violation may contest the violation all the way through the Iowa Supreme Court." *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 848 (N.D. Iowa 2015), aff'd in part, rev'd in part sub nom. *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016). Even stranger, Plaintiffs argue for taking away process so this part of the prong simply doesn't make sense with the Plaintiffs' position, which illustrates the absurdity of it. Plus, removing process would have undesirable outcomes. The effect of removing the administrative hearing process and allowing the citations to be contested only through the court system would unnecessarily impose significant workload on the already burdened state courts. The consequences of the Plaintiffs' position frustrate due process, limit choices of motor vehicle owners, force people into unnecessary financial risks and judgments, frustrates governmental interests and burdens the court system. As a matter of law, the City of Des Moines ordinance and process passes all factors of the Mathews test.

IV. Conclusion

The district court stated that it came to conclusions different than the federal courts for two reasons: the Iowa case law related to municipalities being required to strictly adhere to ordinances and the "fact" that Plaintiffs were not told how to

request an infraction. As demonstrated above, the cases relied upon by the district court are of little value given they were published prior to the home rule amendment. Further, they are factually dissimilar in an important way—they dealt with a reduction in process—in contrast to the City of Des Moines providing additional process.

Vehicle owners received notice of their right to a district court hearing in the NOV. They were also given the opportunity at informal resolution with the City. This was optional as is made plain by the language on the NOV. If a vehicle owner availed himself of the administrative option and lost, he was again notified of his right to access the district court. There was ample notice of one's right to be heard and there was no impediment or reduction of process. The facts asserted by the Plaintiffs through affidavit did not actually claim the administrative process was involuntary and the sole avenue to dispute their citations. For all the reasons herein, the City of Des Moines respectfully requests the Court reverse the order of the Iowa District Court.

V. Oral Argument Request

The City of Des Moines respectfully requests oral argument.

Respectfully Submitted,

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CERTIFICATIONS

Compliance with Type-Volume Limitation, Typeface Requirements and Type-Styles Requirements.

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 6,219 words.

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirement for Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Word 2013 in Times New Roman 14 point font.

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Filing. On February 23, 2018, this Brief was filed with the Clerk of the Iowa Supreme Court by filing it on the Appellate Court EDMS system, and a copy of the same was sent to Appellant's attorney via EDMS.

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