IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 17-1489
Polk County Case No. CVCV050995

REUVEN WEIZBERG, DAVID PETER VENG-PEDERSON, and JACOB PATRICK DAGEL,

Plaintiffs-Appellees / Cross-Appellants,

v.

CITY OF DES MOINES, IOWA,

Defendants-Appellant / Cross-Appellee,

and

GATSO USA, INC.,

Cross-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JUDGE LAWRENCE P. MCLELLAN

FINAL BRIEF OF CROSS-APPELLEE GATSO USA, INC.

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I. Did the District Court properly conclude the ordinance does not infringe on a fundamental right?

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II. Did the District Court properly conclude Plaintiffs failed to state claims for violations of Substantive Due Process, Equal Protection and Privileges and Immunities?

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III. Did the District Court properly conclude the optional administrative hearing process did not infringe on Plaintiffs' Procedural Due Process rights?

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

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Star Equip., Ltd. v. State, Iowa Dep't of Transp., 843 N.W.2d 446 (Iowa 2014).

Des Moines Municipal Code § 114-243.

IV. Did the District Court properly conclude Gatso's involvement did not constitute an unlawful delegation of police power?

Bunger v. Iowa High Sch. Athletic Ass'n, 197 N.W.2d 555 (Iowa 1972).

City of Cedar Rapids v. Leaf, 898 N.W.2d 204 (Iowa Ct. App. 2017).

City of Cedar Rapids v. Lee, No. CRCISC212558 (Iowa Dist. Ct., Nov. 5, 2015).

City of Sioux City v. Jacobsma, 862 N.W.2d 335 (Iowa 2015).

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In re Estate of Workman, 903 N.W.2d 170 (Iowa 2017).

Warren Cnty. Bd. of Health v. Warren Cnty. Bd. of Supervisors, 654 N.W.2d 910 (Iowa 2002).

Des Moines Municipal Code § 144-243.

V. Did the District Court properly conclude the Ordinance is not preempted by Iowa Code §§ 364.22 or 602.6101, or the IDOT?

Iowa Const. Art. III, § 38A.

Iowa Code § 364.22.

Iowa Code § 602.6101.

BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes, 646 N.W.2d 857 (Iowa Ct. App. 2002).

Brooks v. City of Des Moines, 844 F.3d 978 (8th Cir. 2016).

City of Cedar Rapids v. Leaf, No. CRCISC214393 (Iowa Dist. Ct., Feb. 9, 2016).

City of Cedar Rapids v. Leaf, 898 N.W.2d 204 (Iowa Ct. App. 2017).

City of Cedar Rapids v. Lee, No. CRCISC212558 (Iowa Dist. Ct., Nov. 5, 2015).

City of Davenport v. Seymour, 755 N.W.2d 542 (Iowa 2003).

City of Sioux City v. Jacobsma, 862 N.W.2d 335 (Iowa 2015).

Hughes v. City of Cedar Rapids, 112 F. Supp. 3d 817 (N.D. Iowa 2015).

Hughes v. City of Cedar Rapids, 840 F.3d 987 (8th Cir. 2016).

Des Moines Municipal Code § 144-243.

VI. Did the District Court properly conclude Plaintiffs' unjust enrichment claims against Gatso fail as a matter of law?

Crippen v. City of Cedar Rapids, 618 N.W.2d 562 (Iowa 2000).

State ex rel Palmer v. Unisys Corp., 617 N.W.2d 142 (Iowa 2001).

Des Moines Municipal Code § 144-243.

VII. Did the District Court properly conclude Plaintiffs failed to state a claim for a private cause of action for money damages under the Iowa Constitution?

42 U.S.C. § 1983.

Carlson v. Green, 446 U.S. 14 (1980).

Conklin v. State, 863 N.W.2d 301 (Iowa Ct. App. 2015).

Correctional Servs. v. Malesko, 534 U.S. 61 (2001).

Cunha v. City of Algona, 334 N.W.2d 591 (Iowa 1983).

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FDIC v. Meyer, 510 U.S. 471 (1994).

Godfrey v. State, 898 N.W.2d 844 (Iowa 2017).

Minecci v. Pollard, 565 U.S. 118 (2012).

ROUTING STATEMENT

This case involves the application of existing legal principles to the facts of the case and, therefore, the case should be transferred to the Court of Appeals pursuant to Iowa R. App. P. 6.1101.

STATEMENT OF THE CASE

Plaintiffs-Appellees/Cross-Appellants ("Plaintiffs") filed claims against the City of Des Moines (the "City") and Gatso USA, Inc. ("Gatso") claiming the City's Automated Traffic Enforcement Program ("ATE System") is unconstitutional, is preempted by Iowa law, and constitutes an unlawful delegation of police power. Plaintiffs also stated as a separate count a private cause of action under the Iowa Constitution and sought damages for unjust enrichment and injunctive relief.

Gatso filed a motion for summary judgment under Iowa Rule of Civil Procedure § 1.981(2) and the City filed a motion to dismiss under Rule § 1.421(1)(f). On July 25, 2016, the Iowa District Court for Polk County (the "District Court") granted Gatso's motion for summary judgment in full and granted the City's motion to dismiss on all counts except Plaintiffs' claims for procedural due process. (App. pp. 257–90.)

After Gatso's dismissal, the case proceeded solely against the City on the procedural due process claim. An additional Plaintiff, Jacob Dagel, was joined on February 2, 2017. (App. pp. 296–308.) The District Court certified a class with the same order. (*Id.*) The City filed a motion for summary judgment and Plaintiffs filed a cross motion for summary judgment, both on the remaining procedural due process claim. The District Court granted summary judgment in favor of Plaintiffs and against the City. (App. pp. 504–22.) The District Court

held the City violated Plaintiffs' due process rights by requiring them to participate in an administrative hearing process that was not outlined in the City ordinance.

The City has appealed the Court's ruling granting summary judgment in favor of Plaintiffs on the issue of procedural due process. Plaintiffs have cross-appealed the Court's order granting summary judgment in favor of Gatso and dismissing Plaintiffs' remaining claims against the City, as well as the Court's class definition.[1]

The District Court properly determined Plaintiffs' claims against Gatso fail as a matter of law. A challenge to the City's ATE system was previously reviewed and rejected by the United States District Court for the Southern District of Iowa and the Eighth Circuit.[2] Numerous judges have reviewed and rejected similar challenges to the City of Cedar Rapids' ATE system.[3]

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[1] As noted, Gatso was dismissed from the case prior to Plaintiffs filing a motion to certify class. Gatso did not participate in any proceedings concerning whether a class should be certified, and if so, how that class should be defined. If the dismissal of the claims against Gatso is reversed and remanded Gatso should be given an opportunity to be heard in District Court on these questions.

[2] *Brooks v. City of Des Moines*, 2015 WL 13309603, No. 15-CV-115-CRW (S.D. Iowa July 29, 2015) (the Hon. Charles Wolle, rejecting constitutional challenge to Des Moines' ATE system), affirmed in part, reversed in part, 844 F.3d 978 (8th Cir. 2016).

[3] *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817 (N.D. Iowa 2015) (the Hon. Linda Reade, rejecting constitutional challenge to the City's ATE system), affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016); *Cedar Rapids v. Leaf*, 898 N.W.2d 204 (Iowa Ct. App. 2017) (table opinion) (further review

Challenges to ATE systems used in Sioux City and Davenport have also been considered and rejected by the Iowa Supreme Court.[4] In light of the universal approval of the ATE systems used in the State of Iowa, the District Court's dismissal of Gatso should be affirmed.

STATEMENT OF FACTS

In 2011, the City began Automated Traffic Enforcement ("ATE") pursuant to Des Moines Municipal Code ("DMMC") § 114-243 (the "Ordinance"). (App. pp. 355–56.) This Ordinance authorized the City to install and operate an electronic system to automatically produce digital images of vehicles violating a speed limit or a traffic signal (*i.e.*, a red light). DMMC § 114-243. The City and Gatso subsequently entered into a contract (the "Contract") pursuant to which Gatso agreed to assist the City by installing and operating the ATE system in exchange for compensation. (App. pp. 49–66.)

Under the Ordinance, when an ATE camera captures an image of a vehicle either running a red light or speeding, a Notice of Violation is mailed to the vehicle owner. DMMC § 114-243(d)(1); (*see* App. pp. 357–58, 363–64, 371–

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pending); *Behm v. City of Cedar Rapids,* 2016 WL 9024919, No. CVCV083575 (Iowa Dist. Ct. June 5, 2016) affirmed 898 N.W.2d 204 (Iowa Ct. App. 2017) (table opinion) (further review pending); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558 (Iowa Dist. Ct. Nov. 5, 2015) (the Hon. Robert Sosalla, rejecting constitutional challenges to the City of Cedar Rapids' ATE system).

[4] *City of Sioux City v. Jacobsma*, 862 N.W.2d 335 (Iowa 2015) (rejecting constitutional challenge to Sioux City's ATE ordinance); *City of Davenport v. Seymour*, 755 N.W.2d 533 (Iowa 2008) (Davenport's ATE ordinance not preempted by Iowa Code chapter 321).

72, 377–78.) The Notice of Violation informed the recipient of the details of the violation and explained that they had the right to contest the violation. (App. pp. 357–58, 363–64, 371–72, 377–78.)

The City provides vehicle owners the option of contesting the violation, at no charge, in an administrative hearing. (*See* App. pp. 357–69, 371–76, 377–79, 381, 383–84.) If a vehicle owner chooses to contest a citation at an administrative hearing and is not satisfied with the decision, they may demand that a municipal infraction citation be issued and then proceed to trial in small claims court. (App. pp. 378, 384, 358, 362, 364, 369, 372, 376.) This will result in a trial before a judge or magistrate at which trial the vehicle owner may raise defenses like any other trial. Iowa small claims court decisions can in turn be appealed to Iowa District Court. *See* Iowa Code § 631.13. Like any Iowa District Court case, a disappointed litigant has the option of taking further appeal to the Iowa Supreme Court.

The vehicle owner may also bypass the administrative hearing altogether and immediately contest the citation by asking that a municipal infraction citation be issued and filed in small claims court. *See* DMMC § 114-243(d)(2); (App. pp. 378, 358, 364, 372.). Contesting a citation by requesting a municipal infraction citation is explicitly stated as an option in the Notice of Violation. (App. pp. 378, 358, 364, 372 ("Alternatively, you may request a civil infraction (lawsuit) in lieu of an administrative hearing.").) A violation of the Ordinance is

not a criminal matter. *See* DMMC § 114-243(c)(1) and (2) (imposing "civil liability"). Citations are not reported to the Iowa DOT for the purpose of being added to the vehicle owner's driving record. *See* DMMC § 114-243(c)(4).

Plaintiff David Peter Veng-Pedersen was issued a Notice of Violation and fined $65.00 under the ATE system for owning a vehicle traveling 71 mph in a 60 mph zone on Interstate 235. (App. p. 377.) Plaintiff Veng-Pedersen contested his violation in an administrative hearing and was determined liable by the hearing officer. (App. pp. 379–84.) Plaintiff Veng-Pedersen did not demand that a municipal infraction be issued and proceed to trial in small claims court, in effect appealing the administrative officer's decision, nor did he pay the fine. (App. p. 67.)

Plaintiff Reuven Weizberg was issued Notices of Violation and fined $65.00 under the ATE system for owning a vehicle traveling 72, 72, and 71 mph in a 60 mph zone on Interstate 235 on May 1, 2015, May 14, 2015, and May 23, 2015, respectively. (App. pp. 357, 363, 371.) Plaintiff Weizberg contested his three Notices of Violation in an administrative hearing and was determined liable by the hearing officer. (App. pp. 359–62, 365–40, 45–48.) Plaintiff Weizberg did not appeal the administrative officer's decision and did not pay the fine. (App. p. 67.)

After Gatso was dismissed from the case by the District Court's grant of summary judgment the case proceeded solely against the City. Plaintiffs were

then granted leave to add an additional Plaintiff, Jacob Dagel. Jacob Dagel was issued a Notice of Violation and fined $65.00 under the ATE system for owning a vehicle traveling 71 in a 60 mph zone on Interstate 235 on August 17, 2016. (App. pp. 385–86.) Plaintiff Dagel contested his Notice of Violation and was determined liable by the hearing officer. (App. pp. 387–91.) Plaintiff Dagel did not appeal the administrative officer's decision and paid the citation. (App. p. 335.)

ARGUMENT

I. Did the District Court properly conclude the Ordinance does not infringe on a fundamental right?

The Court reviews Constitutional claims *de novo*. *Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446, 451 (Iowa 2014). Gatso agrees that the Plaintiffs raised this issue below. The District Court correctly determined the Ordinance does not infringe on a fundamental right.

Plaintiffs alleged violations of their right to interstate and intrastate travel under the Iowa Constitution. (App. p. 22, ¶ 70.) While the right to interstate travel is recognized in Iowa as a fundamental right, *Saenz v. Roe*, 526 U.S. 489, 500 (1999), Iowa courts have declined to recognize a right to *intrastate* travel. *City of Panora v. Simmons*, 445 N.W.2d 363, 367 (Iowa 1989).

In this case, the District Court agreed the right to interstate travel is fundamental but found Plaintiffs had not supported any allegation of

infringement on that right. (App. p. 272.) The District Court determined that, regardless of whether a fundamental right to intrastate travel existed, a purported right to intrastate travel was not infringed upon for the same reasons the right to interstate travel was not infringed upon. (*Id.*)

The District Court was correct in its analysis of the right to travel and the fact it is not implicated by the Ordinance or enforcement thereof. The interstate right to travel has three components: 1) the right to leave and enter a state, 2) the right to be treated as a welcome visitor rather than an unfriendly alien while visiting, and 3) the right to be treated like other citizens after becoming a permanent resident. *Formaro v. Polk Cty.*, 773 N.W.2d 834, 839 (Iowa 2009). There is no suggestion the third component is at issue here.

The United States Supreme Court has described the first component of the right to travel as the "right to go from one place to another." *Saenz,* 526 U.S. at 500. If a statute does not impose an obstacle to entry of the state, then the statute does not directly impair the right to free interstate movement. *Id.* at 501. The "right to travel" does not prevent the enforcement of speed limits, toll roads, or travel related taxes. *See Scheckel v. State*, 838 N.W.2d 870, 2013 WL 4504919, at *2 (Iowa Ct. App. 2013) (unpublished table opinion) (speed limits are not an infringement on right to travel); *Ullmo v. Ohio Tpk. & Infrastructure Comm'n*, No. 1:15 CV 822, 2015 WL 5055867, at *5-6 (N.D. Ohio Aug. 25, 2015) (toll roads are not an infringement on right to travel); *Matsuo v. United*

States, 586 F.3d 1180, 1183 (9th Cir. 2009) (travel related taxes are not an infringement on right to travel; "not everything that deters travel burdens the fundamental right to travel"). Rather, the right to interstate travel prohibits statutes which *actually prevent* interstate movement. *See Edwards v. California*, 314 U.S. 160 (1941) (holding unconstitutional a statute preventing an indigent from entering state).

The enforcement of a valid traffic law—here, a speed limit—does not violate a motorist's right to travel. *See City of Cedar Rapids v. Leaf*, 898 N.W.2d 204, *6 n.4 (Iowa Ct. App. 2017) (further review pending) ("Our supreme court has not yet expressly recognized a fundamental right to intrastate travel under the Iowa Constitution. But even if it were so recognized, our conclusion [that the Cedar Rapids ATE system does not infringe on that right] would remain the same."); *Scheckel v. State*, 838 N.W.2d 870, 2013 WL 4504919, *2 (Iowa Ct. App. 2013) (unpublished table opinion) ("there is no constitutional right to drive, but rather driving is a privilege"); *State v. Ross*, 662 N.W.2d 371 (Iowa Ct. App. 2003) ("Thus, the right to interstate travel does not encompass the commission of a crime while driving a vehicle."); *City of Cedar Rapids v. Marla Marie Leaf*, No. CRCISC214393, at 8 (Iowa Dist. Ct., Feb. 9, 2016) affirmed 898 N.W.2d 204 (Iowa Ct. App. 2017) (table opinion) (further review pending) ("A person does not have a fundamental right to intrastate travel, at least not in the context of an ordinance regulating speed limits.") (evaluating the Cedar

Rapids ATE ordinance); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at 6 (Iowa Dist. Ct. Nov. 5, 2015) ("the ATE ordinance does not proscribe [defendant's] right to travel"); *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817 (N.D. Iowa 2015) (Cedar Rapids' ATE system does not violate the right to travel), affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016) ("A state may enforce conventional traffic regulations—even if they deter travel—without violating the fundamental right to travel."); *United States v. Hare*, 308 F. Supp. 2d 955, 1001 (D. Neb. 2004) ("The constitutional right to travel through Nebraska is not a right to travel in any manner one wants, free of state regulation, and it does not give defendants the right to ignore Nebraska's traffic laws at their discretion."); *State v. Hartog*, 440 N.W.2d 852, 856 (Iowa 1989) (holding mandatory seat belt law did not infringe upon any fundamental right); *Veach v. Iowa Dep't of Transp.*, 374 N.W.2d 248, 249 (Iowa 1985) (holding no fundamental right at stake); *State v. Hitchens*, 294 N.W.2d 686, 687 (Iowa 1980) (analyzing the "privilege of using the public highways"). "No one has a fundamental right to run a red light . . . and the Supreme Court has never held that a property interest so modest [as a $90 traffic fine] is a fundamental right." *Idris v. City of Chicago, Ill.*, 552 F.3d 564 (7th Cir. 2009).

"'Fundamental right' for purposes of constitutional review is not a synonym for 'important.' Many important interests, such as the right to choose

one's residence or the right to drive a vehicle, do not qualify as fundamental rights." *King v. State*, 818 N.W.2d 1, 26 (Iowa 2012). Plaintiffs argue the District Court erred because Plaintiff Weizberg did not feel like a welcome visitor and Plaintiff Veng-Pederson now avoids this section of interstate. (Plaintiffs' Brief p. 53.) It is beyond dispute that the right to travel is subject to speed regulations and the enforcement thereof. Because Plaintiffs have not suffered a violation of their right to travel as a matter of law, a fundamental right is not involved. *See Brooks v. City of Des Moines*, 844 F.3d 978, 980 (8th Cir. 2016); *Hughes v. City of Cedar Rapids,* 840 F.3d 987, 995–96 (8th Cir. 2016); *Cedar Rapids v. Leaf*, 898 N.W.2d 204, *6 (Iowa Ct. App. 2017) (further review pending).

II. Did the District Court properly conclude Plaintiffs failed to state a claim for violations of Substantive Due Process, Equal Protection or Privileges and Immunities Clauses?

The Court reviews constitutional claims *de novo*. *Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446, 451 (Iowa 2014). Gatso agrees that Plaintiffs raised these issues below. Upon finding no infringement of a fundamental right (as discussed above), the District Court properly applied rational basis review to Plaintiffs' constitutional claims and held that Plaintiffs failed to state a claim for which relief could be granted.

A. The ATE System Does Not Violate Substantive Due Process.

Plaintiffs argue on appeal, as they did below, that the ATE system violates substantive due process because of an IDOT determination. The

District Court correctly determined Plaintiffs failed to state a claim for a violation of substantive due process.

"Substantive due process prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *Zaber v. City of Dubuque,* 789 N.W.2d 634, 640 (Iowa 2010) (internal quotations omitted). In analyzing such a claim, the Court first determines whether a fundamental right is at issue. If so, the Court applies strict scrutiny to the challenged legislation; otherwise the Court applies the rational basis test. *King v. State*, 818 N.W.2d 1, 31 (Iowa 2012).

When a fundamental right is not involved, the Due Process Clause requires only "a reasonable fit between the government interest and the means utilized to advance that interest." *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005) (quoting *Reno v. Flores*, 507 U.S. 292, 302, 305 (1993)). Under this level of scrutiny, known as the rational basis test, the legislature need not employ the best means of achieving a legitimate state interest. *Hensler v. City of Davenport*, 790 N.W.2d 569, 584 (Iowa 2010). "As long as the means rationally advances a reasonable and identifiable governmental objective, we must disregard the existence of other methods . . . that we, as individuals, perhaps would have preferred." *Id.* The court presumes legislation is constitutional. *Zaber*, 789 N.W.2d at 640.

Plaintiffs urge an IDOT determination is determinative of whether the

ATE system is rationally related to a legitimate government purpose. The District Court determined that regardless of the effectiveness of the ATE system, the City had a legitimate interest in enforcing the speed limit and the ATE system was rationally related to that interest. (App. p. 272.)

The United States District Court for the Southern District of Iowa and the Eighth Circuit have analyzed the Ordinance, applying the rational basis test. *Brooks v. City of Des Moines*, 2015 WL 13309603, No. 15-CV-115-CRW at *2 (S.D. Iowa July 29, 2015) ("Plaintiffs simply had no right to violate Iowa laws governing highway speed nor disrespect the City's reasonable method of detecting and penalizing speed violations with modest fines."), affirmed in part, reversed in part, 844 F.3d 978, 980 (8th Cir. 2016). In the U.S. District Court for the Northern District of Iowa, where similar claims were summarily dismissed, the U.S. District Court held that: "Under rational basis, the court has no trouble concluding that the ATE system is 'rationally related to a legitimate government interest.'" *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 840 (N.D. Iowa 2015), affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016) (quoting *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012)). "The City could rationally conclude that the ATE system would reduce the number of people violating traffic laws while simultaneously raising money." *Id.* The Eighth Circuit affirmed: "The district court properly determined that the ordinance would survive rational basis even if it did violate IDOT rules."

Hughes v. City of Cedar Rapids, 840 F.3d 987 (8th Cir. 2016). Likewise, in other cases before the Iowa District Court in and for Linn County, the Court held that "the City [of Cedar Rapids] has a legitimate interest in enforcing traffic regulations on roads that traverse Cedar Rapids. The City's ATE Ordinance is a reasonable fit to effectuate that legitimate interest." *City of Cedar Rapids v. Marla Marie Leaf*, No. CRCISC214393 at *9 (Iowa Dist. Ct., Feb. 9, 2016) affirmed 898 N.W.2d 204 (Iowa Ct. App. 2017) (table opinion) (further review pending). In a separate case, it has also found "the [Cedar Rapids] ATE Ordinance is a conditionally permissible means to effectuate those interests." *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at * 6 (Iowa Dist. Ct. Nov. 5, 2015).

Other courts in ATE cases have found that ATE systems easily pass rational basis review. *See Idris v. City of Chicago, Ill.,* 552 F.3d 564, 566 (7th Cir. 2009) ("A system that simultaneously raises money and improves compliance with traffic laws has much to recommend it and cannot be called unconstitutionally whimsical."); *Smith v. City of St. Louis*, 409 S.W.3d 404, 425–26 (Mo. Ct. App. 2013) ("Reducing the dangerousness of intersections by targeting vehicles that violate existing traffic regulations is rationally and substantially related to the health, safety, peace, comfort, and general welfare of the inhabitants of St. Louis, and is a valid exercise of City's police power."); *Mills v. City of Springfield, Mo.,* 2:10-CV-04036-NKL, 2010 WL 3526208 (W.D.

Mo. Sept. 3, 2010) ("Under the lenient rational basis test, the City of Springfield's red light camera ordinance is rationally related to the legitimate government interest in public safety. Clearly, a legislative body could find that improved surveillance and enforcement of red light violations would result in fewer accidents.").

Traffic regulations generally have been found to be rationally related to the safety and welfare of the public. "Traffic laws are 'essential to the preservation of the health, safety, and comfort of citizens.'" *Scheckel v. State*, 838 N.W.2d 870, 2013 WL 4504919, *2 (Iowa Ct. App. 2013) (unpublished table opinion) (quoting *Hendrick v. State of Md.*, 235 U.S. 610, 622 (1915); *accord Gravert v. Nebergall*, 539 N.W.2d 184, 186 (Iowa 1995) (stating the police power is the authority "to pass laws that promote the public health, safety, and welfare")). "A law is not rendered unconstitutional even though a law inflicts hardship, such as a financial cost or deprivation of privileges." *Id.* (citing *Spurbeck v. Statton*, 106 N.W.2d 660, 663 (Iowa 1960)). "As such, the privilege of driving a car may be restricted by traffic laws because such laws promote public safety, while still operating within the confines of the constitution." *Id.* (citing *Spurbeck*, 106 N.W.2d 660 at 663; *State v. Holt*, 156 N.W.2d 884, 887 (Iowa 1968) (recognizing "no absolute right to drive on the highway under any and all conditions")).

The District Court correctly determined the ATE system passes rational

basis review. Enforcing traffic laws and protecting law enforcement officers are legitimate government interests and the ATE system is a rational way to enforce these interests. The constitutional inquiry stops there. It is irrelevant that Plaintiffs or anyone else would prefer a different method.

Substantive due process also prevents the government "from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *Zaber v. City of Dubuque,* 789 N.W.2d 634, 640 (Iowa 2010). "[S]ubstantive due process is reserved for the most egregious governmental abuses against liberty or property rights." *Blumenthal Inv. Trusts v. City of W. Des Moines*, 636 N.W.2d 255, 265 (Iowa 2001) (citing *Rivkin v. Dover Twp. Rent Leveling Bd.*, 671 A.2d 567, 575 (N.J. 1996)). A system which enforces speed limits in a safe and efficient manner, while affording a full opportunity to appeal a citation in an administrative hearing, the Iowa courts, or both, does not shock the conscience. *See Hughes v. City of Cedar Rapids,* 840 F.3d 987, 996 (8th Cir. 2016) ("the City and Gatso's acts are not 'so disproportionate to the need presented, and ... so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to brutal and inhumane abuse of official power literally shocking to the conscience.'" (quoting *Christiansen v. W. Branch Cmty. Sch. Dist.*, 674 F.3d 927, 937 (8th Cir. 2012)); *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 840 (N.D. Iowa 2015), affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016) ("The court also

finds that Defendants' alleged conduct does not remotely approach the level of shocking the conscience.").

B. The ATE System Does Not Violate the Equal Protection or Privileges and Immunities Clauses.

The Court reviews Constitutional claims *de novo*. *Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446, 451 (Iowa 2014). Gatso agrees the Plaintiffs raised this issue below. The District Court correctly determined Plaintiffs failed to state a claim that the ATE System violates the Equal Protection Clause or the Privileges and Immunities Clause.

According to the Equal Protection Clause of the Iowa Constitution: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."[5] Iowa Const. art. I, § 6. "Under this provision, the legislature must not act arbitrarily when it classifies citizens." *Perkins v. Bd. of Supervisors of Madison Cnty.*, 636 N.W.2d 58, 71–72 (Iowa 2001) (citing *John R. Grubb, Inc. v. Iowa Hous. Fin. Auth.*, 255 N.W.2d 89, 95 (Iowa 1977)).

A challenge under the Privileges and Immunities Clause of the Iowa

[5] Article I § 6 is sometimes referred to as Iowa's "equal protection clause." *See, e.g., King v. State,* 818 N.W.2d 1, 22 (Iowa 2012). While the phrase "privileges or immunities" appears in the Equal Protection Clause, the provision is distinct from the "privileges and immunities" clause found in Article IV, § 2 of the U.S. Constitution, which is designed to place the citizens of each state upon the same footing with citizens of other states.

Constitution is tested by "traditional equal protection analysis." *Perkins v. Bd. of Supervisors of Madison Cnty.*, 636 N.W.2d 58, 73 (Iowa 2001) (citing *Utilicorp United Inc. v. Iowa Utilities Bd., Utilities Div., Dep't of Commerce*, 570 N.W.2d 451, 455 (Iowa 1997)). Thus, "[w]e have found the Privileges and Immunities Clause of the state constitution will not defeat a statutory scheme simply because it benefits certain individuals or classes more than others." *Perkins*, 636 N.W.2d at 73 (citing *Train Unlimited Corp. v. Iowa Ry. Fin. Auth.,* 362 N.W.2d 489, 495 (Iowa 1985)).

Plaintiffs have not argued membership in a suspect class. They argue the ATE system classifies based on whether a license plate is included in the Nlets database[6] and whether a vehicle has a rear license plate. (Plaintiffs' Brief, p. 50.) These classifications are not based on ethnicity, religion, gender, disability or any other immutable or protected trait. In no way can these distinctions among vehicles and/or their owners be construed as suspect for purposes of constitutional analysis. Because Plaintiffs have not suffered a violation of a fundamental right, and are not members of a suspect class, the District Court correctly analyzed the ATE system under rational basis review. *See Brooks v. City of Des Moines*, 844 F.3d 978, 980 (8th Cir. 2016); *Hughes v. City of Cedar Rapids,* 840 F.3d 987, 996 (8th Cir. 2016); *Cedar Rapids v. Leaf*, 898 N.W.2d 204, *6

[6] The City provides Gatso with access to a database of license plates and associated information (also known as the "Nlets" database) which is owned and operated by the National Law Enforcement Telecommunications System.

(Iowa Ct. App. 2017) (further review pending); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at 6–7 (Iowa Dist. Ct. Nov. 5, 2015).

Under rational basis review, "the statute need only be rationally related to a legitimate state interest." *Tyler v. Iowa Dep't of Revenue*, 904 N.W.2d 162 (Iowa 2017) (internal citations omitted). "Under a traditional rational basis review, courts are required to accept generalized reasons to support the legislation, even if the fit between the means and end is far from perfect." *Varnum v. Brien*, 763 N.W.2d 862, 879 n. 7 (Iowa 2009). Despite this deference, the government's freedom in classification is "not absolute." *Tyler*, 904 N.W.2d at 166. "Under the rational basis test, we must determine not only that the statute serves a legitimate governmental interest, but also that the interest is 'realistically conceivable' and has a 'basis in fact.'" *Id.* (citing *Racing Ass'n of Central Iowa v. Fitzgerald*, 675 N.W.2d 1, 7–8 (Iowa 2004)).

"A statute or ordinance is presumed constitutional and the challenging party has the burden to negate every reasonable basis that might support the disparate treatment." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 458–59 (Iowa 2013); *see also Racing Ass'n of Central Iowa v. Fitzgerald*, 675 N.W.2d 1, 8 (Iowa 2004) ("This burden includes the task of negating every reasonable basis that might support the disparate treatment."). "The City is not required or expected to produce evidence to justify its legislative action." *Horsfield*, 834 N.W.2d at 458–59. "The burden is not on the government to justify its action,

but for the plaintiff to rebut a presumption of constitutionality." *Tyler*, 904 N.W.2d at 166.

It does not matter for purposes of equal protection and privileges and immunities that the ATE system is not designed to capture every violation of traffic laws. Incremental problem solving or underinclusiveness does not make a statute unconstitutional. "Under the rational basis test, we do not require the ordinance to be narrowly tailored." *Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d 255 (Iowa 2007). A statute is not unconstitutional "simply because it benefits certain individuals or classes more than others." *Perkins*, 636 N.W.2d at 73 (citing *Train Unlimited Corp.,* 362 N.W.2d at 495). "If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 175 (1980) (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)). A classification cannot create an unconstitutional "fit" unless the classification features "extreme degrees of overinclusion and underinclusion in relation to any particular goal." *LCSP, LLLP v. Kay-Decker*, 861 N.W.2d 846, 861 (Iowa 2015).

As an initial matter, the Ordinance does not create a classification. Plaintiffs claim classifications are created in the implementation of the ATE system because not all vehicles have rear license plates and because license

plates on some government-owned vehicles are not registered in the Nlets database.

The District Court correctly determined the City's decision to implement an ATE system that captures only rear license plate images satisfies the rational basis test. (App. p. 21.); s*ee Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 842 (N.D. Iowa 2015) ("The City could rationally conclude that a system that only photographs rear license plates is less expensive and that it is more cost-effective to capture fewer people who violate the Ordinance with a less expensive system.") affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016). Implementing a system that takes pictures of both front and rear license plates would be more invasive of privacy (passengers in a vehicle may be identifiable), more costly, technically more difficult, largely redundant, and burdensome. *Id.* ("It is irrelevant that other ATE systems exist that allow for photographs of both front and rear license plates.").

Similarly, use of the Nlets database is rational. *Id.* ("Defendants could rationally conclude that purchasing the license plate databases it does is the most cost-effective way to enforce the Ordinance.") For example, trailers are rationally distinguishable from other vehicles—the trailer is often not owned by the same person or entity that owns the vehicle pulling the trailer. Nor is the implementation of the ATE Ordinance rendered unconstitutional by the fact that certain government-owned vehicles, including vehicles used by law

enforcement and security personnel, may be excluded from the license plate database. *See id.* ("That ATE enforcement may be underinclusive because of the limitation of the camera system and the license plate databases does not matter.") "The legislature may select one phase of one field and apply a remedy there, neglecting the others." *Hawkeye Commodity Promotions, Inc.*, 432 F. Supp. 2d 822, 859 (N.D. Iowa 2006) (quoting *Am. Fed'n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538 (1949)).

Because Plaintiffs cannot show that the ATE system is constitutionally irrational, the District Court correctly determined Plaintiffs failed to state a claim for a violation of the Equal Protection or Privileges and Immunities Clause. *See Hughes v. City of Cedar Rapids,* 840 F.3d 987, 996 (8th Cir. 2016); *Brooks v. City of Des Moines*, 844 F.3d 978, 980 (8th Cir. 2016); *Cedar Rapids v. Leaf*, 898 N.W.2d 204, *6 (Iowa Ct. App. 2017) (further review pending); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at *6–7 (Iowa Dist. Ct. Nov. 5, 2015).

III. Did the District Court improperly conclude the optional administrative hearing process infringed on Plaintiffs' Procedural Due Process rights?

The Court reviews Constitutional claims *de novo. Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446, 451 (Iowa 2014).

The District Court found the City (not Gatso) violated Plaintiffs' procedural due process rights by requiring an informal hearing process not

outlined in the Ordinance. Gatso is a private entity. It did not pass the ATE Ordinance, nor did it mandate, set up or participate in the informal hearing process. Gatso, as a private actor, owes no constitutional duties to the Plaintiffs. Accordingly, whether this Court affirms or reverses the District Court's finding that the City violated Plaintiffs' procedural due process rights should have no effect on the grant of summary judgment to Gatso. However, Gatso will address this issue in support of the City's position.

The City asserts the District Court erred by 1) finding the administrative hearing process was not optional, and 2) determining the optional process violated Plaintiffs' due process rights. Gatso agrees with the City's position that the District Court erred.

The District Court erred by relying on paraphrased statements in Plaintiffs' Statement of Material Facts which were not supported by their cited sources. (App. pp. 509–10.) The District Court also erred by relying on Plaintiffs' *belief* that the administrative hearing process was mandatory, rather than whether the administrative hearing process was *actually* mandatory. (*Id.*) The optional nature of the administrative hearing process was supported in the record by the Ordinance and the Notices of Violation provided by each Plaintiff, which inform recipients as to their ability to request a municipal infraction. DMMC § 114-243(d)(2); (App. pp. 356–91; 328, ¶ 5.) Therefore, at a minimum, there is a genuine issue of material fact as to whether the

administrative hearing process is optional, and the District Court erred in its finding.

Gatso also agrees with the City's position that the District Court erred in its procedural due process analysis. "Procedural due process requires a government action impinging upon a protected interest to be implemented in a fair manner." *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 340 (Iowa 2015). "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). If process is provided by law, that law is the process due. *Ghost Player, L.L.C. v. State*, 860 N.W.2d 323, 330 (Iowa 2015). Otherwise, the court employs a two-step analysis for procedural due process claims. First, the court must determine whether a person has been deprived of a protected liberty or property interest. *Lewis v. Jaeger*, 818 N.W.2d 165, 181 (Iowa 2012). Second, the court determines the process due for that interest. *Id.* In determining the process due, the court balances the (1) private interest at stake, (2) risk of erroneous deprivation, and (3) government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The District Court did not engage in this analysis. (App. p. 511.) The District Court, having found the administrative hearing mandatory, determined that the City had not followed its Ordinance, which does not outline an administrative hearing process. (*Id.*) Therefore, the District Court reasoned, the

Mathews test was unnecessary because the City's failure to follow its Ordinance was an automatic violation of Plaintiffs' procedural due process rights. (*Id.*) This was in error.

Gatso agrees with the City's position that an informal resolution process is not prohibited simply because it is not codified. This would lead to absurd results—a government body would be unable to resolve any matter informally. Therefore, the District Court's determination that the City's failure to codify the administrative hearing process precluded the application of *Mathews* was in error.

Applying the *Mathews* test, as the District Court should have done, there is no dispute that Plaintiffs have a property interest in the $65.00 citation issued under the ATE system. *See Shavitz v. City of High Point*, 270 F. Supp. 2d 702, 709 (M.D.N.C. 2003) (concluding a $50 fine resulting from an ATE system constitutes a legitimate property interest for purposes of due process). However, a $65.00 fine is not a particularly strong property interest. *See Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 846 (N.D. Iowa 2015) ("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.") affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016). Weighing the $65.00 property interest at stake, the court must determine what amount of process is due to Plaintiffs and whether they have been afforded that due process.

Under the *Mathews* test, the Court next assesses the risk of erroneous deprivation of the property interest in question. Aside from the fact Plaintiffs had direct access to the court, the administrative hearing process provides process appropriate for the interest at stake. Plaintiffs' myriad complaints regarding the administrative hearing do not render the process meaningless. "Just because another procedure may seem fairer or wiser, does not mean the procedure provided violates due process." *Bowers v. Polk Cnty. Bd. of Supervisors,* 638 N.W.2d 682, 691 (Iowa 2002). "Due process does not entitle a person to a hearing at which they will succeed." *Cochran v. Illinois State Toll Highway Auth.*, No. 15-2689, 2016 WL 3648335, at *3 (7th Cir. July 8, 2016).

The *Mathews* balancing test also requires the Court to weigh the government's interest. The City has an interest in not over-burdening the Iowa Court System. As a matter of sound public policy, this court has previously encouraged out-of-court resolution: "We agree that disposing of invalid traffic charges outside of the judicial system is highly desirable and should not be discouraged." *City of Des Moines v. Iowa Dist. Court For Polk Cty.*, 431 N.W.2d 764, 767 (Iowa 1988). Moreover, the Ordinance allows direct access to the Iowa District Court.

Balancing the $65 fine, low risk of erroneous deprivation in either the administrative hearing or the Iowa District Court, and the City's interest in resolving the citations in a timely, cost effective, and fair manner, the process

provided through an optional administrative hearing or the Iowa District Court satisfies Plaintiffs' procedural due process rights. *See Brooks v. City of Des Moines*, 844 F.3d 978, 980 (8th Cir. 2016). Gatso agrees with the City that additional process does not violate due process, where the procedural protections required by the statute are concurrently available. Therefore, the District Court's determination that the administrative hearing process violates Plaintiffs' procedural due process rights should be reversed.

IV. Did the District Court properly conclude Gatso's involvement did not constitute an unlawful delegation of police power?

The Court reviews the District Court's summary judgment ruling for correction of errors at law. *In re Estate of Workman,* 903 N.W.2d 170, 175 (Iowa 2017). Gatso agrees that Plaintiffs raised this claim below but disagrees with Plaintiffs' restyling of their claim as a constitutional one, entitling them to *de novo* review. Plaintiffs use of the term "unconstitutionally" appears for the first time in their appeal brief. (*Compare* Plaintiffs' Brief, p. 45 *with* App. p. 19 ¶ 48, p. 24 ¶ 77, and Plaintiffs' Brief in Resistance to Defendant Gatso's Motion for Summary Judgment, pp. 47–50.)

Plaintiffs argue the District Court erred by determining Plaintiffs failed to state a claim for unlawful delegation of police power based on their allegations that Gatso matches vehicle images with license plates, calibrates the ATE equipment, flags for the City's review vehicles traveling 11 mph or more

over the speed limit, and mails the Notices of Violation. (Plaintiffs' Brief, pp. 47–50.) The District Court was correct in its determination that Plaintiffs failed to state a claim against Gatso for unlawful delegation of police power.

"As a general rule, a municipal corporation cannot surrender, by contract or otherwise, any of its legislative and governmental functions and powers, including a partial surrender unless authorized by statute." *Warren Cnty. Bd. of Health v. Warren Cnty. Bd. of Supervisors*, 654 N.W.2d 910, 913–14 (Iowa 2002). "It can, however, delegate its right to perform certain acts and duties necessary to transact and carry out its powers. These delegable acts typically involve functions that require little judgment or discretion." *Id.*; *see also Bunger v. Iowa High Sch. Athletic Ass'n*, 197 N.W.2d 555, 559 (Iowa 1972) (delegation of rule-making generally impermissible).

With respect to Plaintiffs' first argument, the Des Moines Police Department determines whether it will issue a citation, not Gatso. (App. p. 69.) Plaintiffs concede that a Des Moines police officer reviews and approves the Notices of Violation. (Plaintiffs' Brief, p. 47; App. p. 283.) Gatso has no authority and its administrative duties involve "little judgment or discretion." (*See id.*); *Hughes v. City of Cedar Rapids,* 840 F.3d 987, 998 (8th Cir. 2016) ("there is no improper delegation (or in statutory terms, conferral) of power upon Gatso"); *Cedar Rapids v. Leaf*, 898 N.W.2d 204, *10 (Iowa Ct. App. 2017) (further review pending) ("Given that it is the Cedar Rapids Police

Department, not Gatso, that determines which vehicle owners are in violation of the ATE ordinance and are to receive a notice of violation for the offense, we conclude, like the district court and Eighth Circuit, the ordinance does not unconstitutionally delegate police power."); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at 7 (Iowa Dist. Ct. Nov. 5, 2015) (same). The Iowa Supreme Court upheld the legality of Sioux City's ATE ordinance, which utilized a private contractor to operate the ATE system, in part because the Sioux City police, and not the contractor, determined which vehicle owners were to be issued a notice of violation. *See City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 337 (Iowa 2015) ("While the ATE ordinance provides that the automated system shall be operated by a private contractor, the police department receives the digital images and determines which 'vehicle owners are in violation of the city's speed enforcement ordinance and are to receive a notice of violation for the offense.'"); *compare to* Des Moines Municipal Code § 144-243(a) ("The police department will determine which vehicle owners are in violation of the city's traffic control ordinances and are to receive a notice of violation for the offense.").

Plaintiffs next argue the City has delegated its authority because Gatso follows the City's instruction to only flag for the City's review vehicles traveling 11 mph or more over the speed limit. Although Plaintiffs assert that enforcing the speed limit against vehicles traveling 11 miles per hour over the speed limit

is at odds with Iowa law, there is no authority for this argument. Necessarily, the City must apply discretion in deciding how to use its limited resources to enforce the law. There is no Iowa Code provision or other legal requirement that the City must cite every person who travels a single mile per hour over the speed limit. Moreover, Plaintiffs' argument is fundamentally flawed. Plaintiffs' argument is that the City has unlawfully delegated its authority by telling Gatso exactly which vehicles to flag. Gatso's following the City's precise instructions only supports the District Court's determination that Gatso's role "requires little judgment or discretion." *See Warren Cnty. Bd. of Health v. Warren Cnty. Bd. of Supervisors*, 654 N.W.2d 910, 913–14 (Iowa 2002).

Plaintiffs argue that the City has delegated to Gatso what they contend is the City's responsibility to calibrate the equipment. The act of calibrating equipment is in the nature of a ministerial or administrative task which does not rise to the level of delegating the City's police power or other discretionary authority. Rather, calibration is an act "necessary to transact and carry out its powers." *Id.*

Plaintiffs' final argument is that the City's use of a volunteer hearing officer who presides over the administrative hearing constitutes an unlawful delegation of police power. This argument is without merit. The independent, volunteer hearing officer is there to consider the vehicle owner's position and, in many cases, chooses to dismiss a citation issued by the police. In no case has

a hearing officer made any determination about whether to issue a Notice of Violation and in every case where a hearing officer finds in favor of the City, that decision is subject to review in the form of a municipal infraction. No police power or other discretionary function vested in the City has been delegated to the hearing officers.

The City may not delegate its legislative and governmental functions and powers. But it may contract with a private company to install and maintain equipment, type in license plate numbers, and send out mail. It may also make use of private citizens with no financial stake to *invalidate* the issuance of ATE citations where they see fit. The District Court was correct in dismissing Plaintiffs' claim for unlawful delegation of police power.

V. Did the District Court properly conclude the Ordinance is not preempted by Iowa Code §§ 364.22 or 602.6101, or the IDOT?

"A trial court's determination of whether a local ordinance is preempted by state law is a matter of statutory construction and is thus reviewable for correction of errors at law." *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 339 (Iowa 2015) (internal quotations omitted). Plaintiffs claim the ATE system is preempted by or otherwise violates Iowa Code §§ 602.6101, 364.22(2) and (4), and 321.230. The District Court correctly found the Ordinance is not preempted by Iowa law.

Under Article III, Section 38A of the Iowa Constitution, a municipality has home rule power to determine local affairs and government as long as it is not inconsistent with the state laws. "A local ordinance is *not* inconsistent with a state law unless it is *irreconcilable* with the state law." *BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes*, 646 N.W.2d 857, 859 (Iowa Ct. App. 2002) (emphasis in original). Under preemption analysis, the proper comparison is the Ordinance with the Iowa Code.[7] *Seymour,* 755 N.W.2d at 542. ("preemption only applies where a local ordinance prohibits what a state statute allows or allows what a state statute prohibits").

Iowa Code § 602.6101 establishes the Iowa District Court's jurisdiction. It states:

> A unified trial court is established. This court is the "Iowa District Court". The district court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil,

[7] The Court of Appeals provided a metaphor when rejecting a preemption argument in another ATE case where plaintiff argued preemption based outside the language of the Ordinance and the Iowa Code:

> Consider the following hypothetical: a state law enforcement official arrests an individual for violation of a state narcotics trafficking law, but the arrest is in violation of the Fourth Amendment. Under [plaintiff's] analysis, the state narcotics trafficking law (the legislative act) would be preempted because the arrest (the executive act) was unlawful. This is wrong. While the arrest may be unlawful, the underlying statute is not preempted.

Cedar Rapids v. Leaf, 898 N.W.2d 204, 8 (Iowa Ct. App. 2017) (further review pending).

> criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body. The district court has all the power usually possessed and exercised by trial courts of general jurisdiction, and is a court of record.

Iowa Code § 602.6101. Iowa Code § 364.22 states, in part: "A city by ordinance may provide that a violation of an ordinance is a municipal infraction."

Plaintiffs argue the Ordinance is preempted by Iowa Code § 602.6101. However, the Ordinance provides direct access to the District Court. The Ordinance does not take traffic jurisdiction away from the Iowa District Courts and therefore Des Moines Mun. Code § 144-243 is not contrary to Iowa Code § 602.6101. *See Brooks v. City of Des Moines*, 844 F.3d 978, 980 (8th Cir. 2016); *City of Cedar Rapids v. Marla Marie Leaf*, No. CRCISC214393, *6 (Iowa Dist. Ct., Feb. 9, 2016) affirmed 898 N.W.2d 204 (Iowa Ct. App. 2017) (table opinion) (further review pending) (Cedar Rapids' "Municipal Code § 61.138 is not an unconstitutional grant of jurisdiction"), *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at *4–5 (Iowa Dist. Ct. Nov. 5, 2015) (same).

Nor is the Ordinance inconsistent with Iowa Code § 364.22, which provides, in part: "[a]n officer authorized by a city to enforce a city code or regulation may issue a civil citation to a person who commits a municipal infraction." The citations received by Plaintiffs were issued by a Des Moines police officer, who electronically signed the bottom of the citation. (App. pp. 377, 357, 363, 371, 385.) Plaintiffs' claims that the ATE system is in some

manner contrary to § 364.22 are without merit. *See Brooks v. City of Des Moines*, 844 F.3d 978, 980 (8th Cir. 2016); *Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817 (N.D. Iowa 2015), affirmed in part, reversed in part, 840 F.3d 987 (8th Cir. 2016) (finding Cedar Rapids ATE ordinance consistent with § 364.22); *City of Cedar Rapids v. Marla Marie Leaf*, No. CRCISC214393, *10 (Iowa Dist. Ct., Feb. 9, 2016) affirmed 898 N.W.2d 204 (Iowa Ct. App. 2017) (table opinion) (further review pending) ("we conclude, like the district court and Eighth Circuit, the ordinance does not unconstitutionally delegate police power."); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558, at *7 (Iowa Dist. Ct. Nov. 5, 2015) (similar).

The District Court was correct in determining the Ordinance is not preempted by Iowa Code § 364.22 or § 602.6101. Contrary to Plaintiffs' arguments, the District Court examined the Plaintiffs arguments under preemption analysis. (App. p. 280–81.) and came to the correct conclusion.

VI. Did the District Court properly conclude Plaintiffs' unjust enrichment claims against Gatso fail as a matter of law?

The Court reviews the District Court's granting of summary judgment for errors at law. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). To show unjust enrichment, Plaintiffs must show: "(1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit

under the circumstances." *State ex rel Palmer v. Unisys Corp.*, 617 N.W.2d 142, 254–55 (Iowa 2001). The District Court correctly granted summary judgment in favor of Gatso on Plaintiffs' unjust enrichment claims.

Procedurally, at the time Gatso filed its motion for summary judgment, no Plaintiff had paid any fine and the class was not certified; therefore, there could be no "enrichment" of Gatso at the Plaintiffs' expense. (App. p. 285.) The later addition of Plaintiff Dagel to the case, who allegedly did pay a fine, should not impact that decision. Plaintiffs had every opportunity to amend its pleadings and add parties prior to the District Court's grant of summary judgment in favor of Gatso. This Court should review the grant of summary judgment based on the record as it existed as of the time of the District Court's ruling.

However, even if Plaintiff Dagel had been a party to the action at that time, Plaintiffs' unjust enrichment claims against Gatso would still fail. Fines paid by Plaintiffs from their citations are owed to the City, not Gatso. *See* Des Moines Mun. Code § 144-243(d)(1) (stating that fines are "payable to the city of Des Moines"). All citation payments accepted by Gatso on behalf of the City are deposited in a lock box facility and transferred to the City on a scheduled basis. (App. pp. 53–54, ¶ 3.16.) Gatso separately invoices the City for services rendered based on a compensation schedule set out in the Contract. (App. p. 50, ¶ 2.1.) Gatso has not received a benefit from the Plaintiffs.

Substantively, the only underlying violation found by the District Court was that the City (not Gatso) violated Plaintiffs' procedural due process rights. All the substantive claims against Gatso were properly dismissed as a matter of law. There was no wrongful conduct by Gatso. Gatso's retention of contract payments from the City for services rendered to the City was, as a matter of law, not unjust.

VII. Did the District Court properly conclude Plaintiffs failed to state a claim for a private cause of action for money damages under the Iowa Constitution?

The District Court dismissed Plaintiffs' claim for a private cause of action for money damages under the Iowa Constitution, citing *Conklin v. State*, 863 N.W.2d 301 (Iowa Ct. App. 2015). While the appeal in the case at bar was pending this Court decided *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017). In *Godfrey*, a majority of this Court recognized a *Bivens*-style private cause of action for money damages against state officials for violations of equal protection and due process rights in the context of a wrongful termination and discrimination suit brought by a public employee where no adequate legislative remedy was available to that public employee. Because *Godfrey* was decided after the District Court's dispositive rulings, the holding of *Godfrey* was not briefed or considered in District Court.

Initially, the Court should not extend the holding of *Godfrey* to provide a constitution-based money damages remedy to Plaintiffs in this case. Three

members of the Court in *Godfrey* declined, at that time, to adopt a prudential "special-factors" doctrine akin to the doctrine used by the U.S. Supreme Court when considering whether to extend *Bivens*. *Godfrey*, 898 N.W.2d at 879-880. This Court should adopt a "special factors" doctrine and refuse to extend *Godfrey* here. *Godfrey* concerned allegations of intentional misconduct and discrimination by state officials based on sexual orientation and partisan politics. In the federal context *Bivens* actions have been limited to (1) claims by persons injured as a result of an unconstitutional search and seizure (*Bivens*), (2) claims by an individual dismissed by her employer on the basis of her sex (*Davis v. Passman*, 442 U.S. 228 (1979)), and (3) claims by a prisoner who died as a result of a prison official's deliberate indifference to medical needs (*Carlson v. Green*, 446 U.S. 14 (1980)). The claims in the case at bar concern, at their root, an arguably poorly worded Ordinance. By contrast, the only claim that survived summary judgment was a procedural due process claim against the City. The conduct alleged here is not the type of intentional wrongdoing for which the deterrence effect of a money damages award against individual wrong doers makes sense.

Further, Plaintiffs are not without a monetary remedy. One, they have a federal legislative remedy available to them in the form of a claim under 42 U.S.C. § 1983. Two, the District Court found Plaintiffs have a common law remedy in the form of an unjust enrichment claim against the City. Notably,

Plaintiffs' prayer for relief in its claim for a private cause of action under the Iowa Constitution seeks the identical financial relief as they requested in their unjust enrichment claim, *i.e.*, restitution of fines actually paid.

Even if the Court were to extend the framework of *Godfrey* to Plaintiffs' allegations it should still affirm the dismissal of the claim. To state a claim for a private cause of action for money damages for constitutional violations a party still must be able to point to a viable underlying constitutional violation. The District Court properly held, as a matter of law, that Plaintiffs can state no such cause of action against Gatso. *Godfrey* does not alter that finding.

Next, there is an established body of federal law arising from the *Bivens* case upon which *Godfrey* is derived. The Court reviewed it at length in *Godfrey*. While this Court has not yet developed a corresponding body of law applying *Godfrey*, the reasoning of the U.S. Supreme Court's post-*Bivens* decisions, if adopted by this Court, require dismissal of Plaintiffs' claim against Gatso and the City as a matter of law.

First, a *Bivens* action can only be brought against *individual agents*. A damages action against the offending public officials serves as a deterrent to unconstitutional conduct by these individuals. A *Bivens* action may not be maintained against those agents' *employer*, *i.e.* the federal agency itself. *See FDIC v. Meyer*, 510 U.S. 471 (1994). Plaintiffs have not sued any individuals. They have only sued a municipality and a private corporation.

Second, a *Bivens* action may not be brought against a *private* entity, such as Gatso, at all. *Correctional Servs. v. Malesko*, 534 U.S. 61 (2001). Nor can a *Bivens* action be brought against private individuals employed by a private employer. *Minecci v. Pollard*, 565 U.S. 118 (2012). The Court should adopt this reasoning in establishing the parameters of a "*Godfrey*" claim. If it does, neither Gatso nor its employees could be sued on a *Godfrey* claim.

Third, a *Bivens*-style action against a municipality has already been considered, and rejected, by this Court in *Cunha v. City of Algona*, 334 N.W.2d 591 (Iowa 1983). The *Cunha* holding was discussed by this Court in *Godfrey*, 898 N.W.2d at 856, 863-64. *Godfrey* did not overrule *Cunha*. The claim against the City fails for this reason.

For these reasons, if this Court considers the application of *Godfrey* to the facts in the case at bar, Plaintiffs' claim for a private cause of action for money damages for constitutional violations should still be rejected, consistent with the reasoning of the U.S. Supreme Court's post-*Bivens* decisions and this Court's decision in *Cunha*.

CONCLUSION

The District Court's dismissal of claims against Gatso should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT

Gatso USA, Inc. requests to be heard in oral argument.

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I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Final Brief of Cross-Appellee was $N/A and that the amount has been paid in full by Cross-Appellee.

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