IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 16-1031
Linn County Case No. CVCV083575

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MYRON DENNIS BEHM, BURTON J. BROOKS,
BOBBY LEE LANGSTON, DAVID LEON BRODSKY,
JEFFREY R. OLSON and GEOFF TATE SMITH,

Plaintiffs-Appellants,

v.

CITY OF CEDAR RAPIDS, IOWA
AND GATSO USA, INC.,

Defendants-Appellees.

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APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR LINN COUNTY
HONORABLE JUDGE CHRISTOPHER L. BRUNS

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# JOINT FINAL BRIEF OF DEFENDANT-APPELLEES CITY OF CEDAR RAPIDS, IOWA AND GATSO USA, INC.

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## 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/Appellants ("Plaintiffs") filed claims against the City of Cedar Rapids (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 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.

Defendants filed a joint motion for summary judgment under Iowa Rule of Civil Procedure § 1.981(2) and the District Court found Defendants were entitled to judgment as a matter of law on all of Plaintiffs' claims. (App. pp. 506–19).

On appeal, Plaintiffs assert the District Court erred in granting summary judgment in favor of Defendants. As discussed below, the District Court conducted an in-depth analysis of each claim presented by Plaintiffs and properly determined that Plaintiffs' claims fail as a matter of law. Three different judges have previously reviewed and rejected virtually identical challenges to the City's ATE System.[1] A challenge to an ATE system used in

[1] *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) (appeal pending); *City of Cedar Rapids v. Marla Marie Leaf*, No. CRCISC214393 (Iowa Dist. Ct., Feb. 9, 2016) (App. p. 65) (the Hon. Patrick Grady, rejecting

Des Moines was also dismissed.[2] Plaintiffs' counsel in the case at bar was counsel for the plaintiffs in these four previous actions. Challenges to ATE systems used in Sioux City and Davenport have also been considered and rejected by the Iowa Supreme Court.[3] The District Court's ruling should be affirmed.

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constitutional challenge to City's ATE system) (appeal pending); *City of Cedar Rapids v. Roger Louis Lee*, No. CRCISC212558 (Iowa Dist. Ct. Nov. 5, 2015) (App. p. 77) (the Hon. Robert Sosalla, rejecting constitutional challenge to City's ATE system).

[2] *Brooks v. City of Des Moines*, No. 15-CV-115-CRW (S.D. Iowa July 29, 2015) (appeal pending) (the Hon. Charles Wolle, rejecting constitutional challenge to Des Moines' ATE system).

[3] *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).

## STATEMENT OF FACTS

In 2011, the City began Automated Traffic Enforcement ("ATE") pursuant to Cedar Rapids Municipal Code § 61.138 (the "Ordinance"). (App. p. 66). The Ordinance authorized the City to install and operate an electronic system to automatically produce digital images of vehicles exceeding a speed limit or disobeying a traffic control device (*i.e.*, a red light). C.R. Code § 61.138. The City and Gatso have a contract (the "Contract") pursuant to which Gatso agreed to assist the City in installing, operating and maintaining the ATE System in exchange for compensation. (App. pp. 3, 506). At issue in this case are four fixed ATE cameras located on I-380.

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. *See* C.R Code § 61.138(d)(1); (App. 66). The notices, like those sent to each Plaintiff in this case, set forth details of a violation and explain the right to contest a violation by requesting an administrative hearing. (App. pp. 16, 26, 33, 35, 53, 55, 85).

The Ordinance provides vehicle owners two options to contest a citation. C.R. Code § 61.138(e). One, the owner may request an administrative hearing before an appeal board consisting of one or more impartial fact finders. *See* C.R. Code § 61.138(e)(1). Two, the owner may request that, in lieu of the ATE citation, a municipal infraction citation be issued and filed with the Small

Claims Division of the Iowa District Court for Linn County. *See* C.R. Code § 61.138(e)(2). This will result in a trial before a judge or magistrate in small claims court, during which the vehicle owner may raise defenses like any other trial. *See* C.R. Code §§ 61.138(e)(2) (stating a non-exhaustive list of certain exemptions from liability) and 61.138(c)(3) (providing that "other defenses" may be considered in the appeal process).

If a vehicle owner chooses the administrative hearing and is not satisfied with the board's decision, he or she may still demand that a municipal infraction citation be issued and then proceed to trial in small claims court. *See* C.R. Code § 61.138(e)(1) and (e)(2). This second opportunity to go to court is explained in a second notice called a Notice of Determination. A Notice of Determination is also sent to a vehicle owner if the owner takes no action and simply fails to pay the fine within thirty days. (App. pp. 18, 24, 28, 37, 39, 44, 57, 59.) ("Citizens may elect to resolve this Notice of Determination of Liability by paying the assessed fine or by appealing to the Small Claims Division of the Iowa District Court in Linn County."). If a decision is rendered in Iowa Small Claims Court, that decision may in turn be appealed to Iowa District Court. *See* Iowa Code § 631.13. As with any Iowa District Court case, a disappointed litigant has the option of taking further appeal to the Iowa Supreme Court.

In no event is a violation of the ATE Ordinance deemed a criminal matter. *See* C.R. Code § 61.138(c)–(d) (imposing "civil liability" in the form of fines ranging from $25-$750). Citations are not reported to the Iowa Department of Transportation ("IDOT") for the purpose of being added to the vehicle owner's driving record. *See* C.R. Code § 61.138(c)(4).

All Plaintiffs were issued a notice of violation and fined $75.00 under the ATE System for traveling more than 11 miles per hour over the speed limit and all Plaintiffs contested their citations through an administrative hearing. (App. pp. 20–21, 30–31, 41–42, 48–50, 61). Plaintiffs Behm, Langston, Brodsky, Olson, and Smith were each determined liable by the hearing officer. (App. pp. 22, 43–44, 51, 62). Plaintiffs Olson and Smith then paid their citations. (App. pp. 64, 93). Plaintiff Brooks contested his citation at an administrative hearing and was found not liable. (App. pp. 31–32). None of the Plaintiffs appealed their administrative determinations to the small claims division of Iowa District Court. (App. pp. 92–93).

## 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).

Plaintiffs' alleged violations of their right to interstate and intrastate travel under the Iowa Constitution. 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. 512). The District Court did not reach the question as to whether there is a fundamental right to *intrastate* travel, because even assuming it exists, there was nothing to support a claim of infringement on that right. (App. p. 512).

The District Court was correct in its analysis of the right to travel and the fact it is not implicated by the ATE 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, *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, it 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).

Plaintiffs argue that the ATE System is irrational and that its irrationality acts as a deterrent to interstate travel, which violates the right to go from one place to another. (Plaintiffs' Appeal Brief "Pl. Br." p. 43.) Plaintiffs rely on a Supreme Court holding that one need not prove actual deterrence to establish

an impairment of this first component of the right to travel. *Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 259 (1974) (addressing an equal protection challenge to a state residency requirement). The reliance is misplaced, however, because as even Plaintiffs themselves note, the Supreme Court in *Memorial Hospital* goes on explain that where actual deterrence is not proven, the classification must at least penalize the exercise of the right to travel. *Id.* Courts have interpreted this "penalty" to mean that the deterrence from travel results in the denial of "basic necessities of life," such as welfare, (*Shapiro v. Thompson*, 394 U.S. 618, 632 (1969)), voting (*Reynolds v. Sims*, 377 U.S. 533, 562 (1964)), and medical care (*Mem'l Hosp.*, 415 U.S. at 259). Defendants are unable to find, and Plaintiffs have not cited to, any cases supporting the assertion that enforcement of motor vehicle speed limits amounts to the denial of a basic necessity of life, such that it penalizes one's exercise of the right to travel. Moreover, courts have also held that even where actual deterrence is shown, it does not necessarily infringe on the right to travel. *Matsuo v. United States*, 586 F.3d 1180, 1183 (9th Cir. 2009) ("not everything that deters travel burdens the fundamental right to travel"). It is beyond dispute that the right to travel is subject to speed regulations and the enforcement thereof.

At bottom, Plaintiffs' assertion that the ATE System is irrational, and therefore in violation of the right to go from one place to another, is lacking in evidentiary support and without merit. While Plaintiffs "assert the law is

disproportionately applied to out-of-state or city vehicles" (Pl. Br. p. 43), the record reflects no factual support for this statement. Similarly, Plaintiffs' assertion that the "radar equipment is inadequately calibrated" (Pl. Br. p. 43), is unsupported and meritless. The undisputed record facts are that in addition to the system automatically calibrating itself every sixty seconds, Gatso calibrates it annually, and the Cedar Rapids Police Department tests the calibration at least quarterly. (App. pp. 482–84, 488–95.). Aside from these measures, the calibration itself is certified by an independent body. (App. pp. 500–01). Plaintiffs offer nothing to support their bare assertions that the ATE System is irrational or prevents movement from one state to another.

Turning to the second component of the right to travel, the right to be treated as a welcome visitor, the law prevents discrimination against nonresidents where there is no substantial reason for the discrimination, other than the fact that they are citizens of other states. *Saenz*, 526 U.S. at 502. Plaintiff Brooks argues that the camera did not provide him sufficient notice as a non-local and therefore he was not treated as a welcome visitor.[4] (Pl. Br. p. 42).

Plaintiff Brooks' assertion simply is not borne out by the facts—non-locals see the exact same road signs as locals. Moreover, the convenience given

[4] Defendants will address the procedural due process implications of this argument in Section III.

to out-of-state recipients, allowing them to contest a notice of violation by mail, cannot be said to discriminate against non-Iowans. *See Hughes v. City of Cedar Rapids*, 112 F. Supp. 3d 817, 845 (N.D. Iowa 2015). The District Court correctly rejected Plaintiffs' claims with regard to the second component of the right to travel.

As has been held in multiple cases, the enforcement of a valid traffic law—here, a speed limit—does not violate a motorist's right to travel. *See 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."); *Leaf*, No. CRCISC214393, at 8 ("A person does not have a fundamental right to intrastate travel, at least not in the context of an ordinance regulating speed limits.") (assessing the Cedar Rapids ATE ordinance) (App. p. 71); *Lee*, No. CRCISC212558, at 6 ("the ATE ordinance does not proscribe [defendant's] right to travel") (App. p. 82); *Hughes*, 112 F. Supp. 3d at 840 (Cedar Rapids' ATE system does not violate the 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).

For purposes of constitutional analysis, "'fundamental right' is not a synonym for 'important interest.' 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). Because Plaintiffs have not suffered a violation of their right to travel as a matter of law, a fundamental right is not involved. *See Hughes*, 112 F. Supp. 3d at 840; *Brooks*, No. 15-CV-115-CRW, at 2; *Leaf*, No. CRCISC214393, at 8–9 (App. p. 72–73); *Lee*, No. CRCISC212558, at 6 (App. p. 82).

## II. Did the District Court Properly Conclude Plaintiffs' Claims for Violations of Substantive Due Process, Equal Protection and Privileges and Immunities Fail as a Matter of Law?

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). Upon finding no infringement on a fundamental right (as discussed above), the District Court

properly applied rational basis review to Plaintiffs' constitutional claims and held that Defendants were entitled to judgment as a matter of law.

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 order. The District Court correctly determined Plaintiffs' claim for a violation of Substantive Due Process fails as a matter of law.

"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 as determinative of whether the ATE system is rationally related to a legitimate government purpose. According to the IDOT's regulations and an administrative report—which did not result from contested case proceedings—the cameras are located at "sites in areas that are not correlated with significant safety issues." (Petition p. 16, ¶ 77(b)). Even assuming they were validly promulgated and apply to the City's ATE system, which the City and Gatso do not concede, the IDOT's regulations and report do not constitute an application of the Court's rational basis test. *See McQuistion v. City of Clinton*, No. 14–0413, 2015 WL 9437783, at *12 (Iowa Dec. 24, 2015) ("the *court* must determine" whether the legislation meets the rational basis test) (emphasis added). As the District Court held, it is not for the agency to determine this issue. (App. p. 514).

In fact, two courts have already analyzed the City's ATE Ordinance and program, applying the rational basis test. In the U.S. District Court for the Northern District of Iowa, where identical claims were summarily dismissed, the 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*, 112 F. Supp. 3d at 840 (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." *Hughes*, 112 F. Supp. 3d at 840. Likewise, in other cases before the Iowa District Court in and for Linn County, the Court held that "the City 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." *Leaf*, No. CRCISC214393, at 9 (App. p. 73). In a separate case, it has also found "the ATE Ordinance is a conditionally permissible means to effectuate those interests." *Lee*, No. CRCISC212558, at 6 (App. p. 82).

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, *2 (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")).

Regardless of whether Plaintiffs could prove in these proceedings that the ATE system locations are more or less prone to accidents, a showing they have not even attempted, the ATE system passes rational basis review. Enforcing traffic laws is a legitimate government interest and the ATE system is a rational way to enforce traffic laws. 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 (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*, 112 F. Supp. 3d at 840 ("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 and 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). The District Court correctly determined Plaintiffs' claims that the ATE System violates the Equal Protection Clause and the Privileges and Immunities Clause both fail as a matter of law.

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)). "As a general rule, the Iowa Supreme Court follows federal equal protection analysis when construing the Iowa Equal Protection Clause." *Johnson v. Univ. of Iowa*, 408 F. Supp. 2d 728, 749 (S.D. Iowa 2004) aff'd, 431 F.3d 325 (8th Cir. 2005) (citing *In re Morrow*, 616 N.W.2d 544,

[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 and 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.

547 (Iowa 2000)). "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe,* 457 U.S. 202, 216 (1982)).

Unless a suspect classification or fundamental right is at issue, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440–42. A challenge under the Privileges and Immunities Clause of the Iowa 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 alleged membership in a suspect class. They allege class distinction based on whether a license plate is included in the Nlets

database[6]; whether a vehicle has a rear license plate; and state of residency. (Petition, ¶¶ 51, 52, 75, 79, 80). 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 Hughes*, 112 F. Supp. 3d at 842; *Brooks*, No. 15-CV-115-CRW, at 2; *Leaf*, No. CRCISC214393, at 9–10 (App. 73–74); *Lee*, No. CRCISC212558, at 6–7 (App. pp. 82–83).

Under rational basis review, "the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic process." *Hawkeye Commodity Promotions, Inc. v. Miller*, 432 F. Supp. 2d 822, 859 (N.D. Iowa 2006) (quoting *City of Cleburne*, 473 U.S. at 440). "A statutory classification that neither proceeds along suspect lines nor infringes fundamental rights must be upheld against equal protection challenge if there is any reasonably conceivable set of facts that could provide a rational basis for the classification." *See FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). Where the statute is facially

[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.

neutral and does not contain a classification, the plaintiff must prove a classification is used in practice, and then the Court proceeds with the analysis. *See Gacke v. Pork Extra, L.L.C.*, 2001 WL 35818480 (Iowa Dist. Ct. Aug. 1, 2001) (citing *Sylvia Dev. Corp. v. Calvert Cty., Md.*, 48 F.3d 810, 818–19 (4th Cir. 1995)) reversed on other grounds, *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168 (Iowa 2004) (overturning district court based on exclusion of evidence and determination of nuisance liability).

"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). "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).

A "legislative choice is not subject to courtroom fact-finding, and may be based on rational speculation unsupported by evidence or empirical data." *FCC*, 508 U.S. at 307. "The City is not required or expected to produce evidence to justify its legislative action." *Horsfield*, 834 N.W.2d at 458–59.

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 under inclusiveness 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)). "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 at 859 (quoting *Am. Fed'n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538 (1949)).

The City's decision to implement an ATE system that captures only rear license plate images satisfies the rational basis test. *See Hughes*, 112 F. Supp. 3d at 842 ("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.") 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 one thing, 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 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 at 859 (quoting *Am. Fed'n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538 (1949)).

Additionally, the basis for using a different procedure for Iowans and non-Iowans is rational. It is not disputed that out-of-state recipients can contest their notice of violation by mail, rather than appearing in person. (*See* App. p. 17). The City may rationally conclude that out-of-state citation recipients live farther away than in-state recipients and therefore allow them to contest their citation without having to travel to Cedar Rapids. *See Hughes*, 112 F. Supp. 3d at 845 (finding "a system that favors out of state residents"

constitutionally sound). It is irrelevant that Plaintiffs can come up with an example of an out-of-state citation recipient who happens to live closer to Cedar Rapids than an in-state citation recipient. A classification "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)).

Moreover, despite Plaintiffs' bare assertions to the contrary, it is of no consequence that the classifications result from administration and enforcement, rather than the Ordinance itself. *See Gacke v. Pork Extra, L.L.C.*, 2001 WL 35818480 (Iowa Dist. Ct. Aug. 1, 2001) (citing *Sylvia Dev. Corp. v. Calvert Cty., Md.*, 48 F.3d 810, 818–19 (4th Cir. 1995) reversed on other grounds, *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168 (Iowa 2004).

Because Plaintiffs cannot show that the ATE system is constitutionally irrational, the District Court correctly determined their claim that it violates the Equal Protection and Privileges and Immunities Clause fails as a matter of law. *See Hughes*, 112 F. Supp. 3d at 842–46; *Brooks*, No. 15-CV-115-CRW, at 2; *Leaf*, No. CRCISC214393, at 10 (App. p. 74); *Lee*, No. CRCISC212558, at 6–7 (App. pp. 82–83).

## III. Did the District Court Properly Conclude the Optional Administrative Hearing Process Did Not Infringe 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). Plaintiffs assert the District Court erred by holding the notice of violations sent to Plaintiffs were not municipal infractions, arguing that Plaintiffs' procedural due process rights were violated because the process provided for municipal infractions by the Iowa Code was not followed, and the process provided fails the traditional *Mathews* balancing test. The District Court correctly determined Plaintiffs' claim for a violation of procedural due process fails as a matter of law.

"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 correctly held that absent the issuance of a citation for a municipal infraction, the notices of violation themselves are not municipal infractions, and as such they do not require proof by clear, satisfactory and convincing evidence as they would if they were being decided in the Iowa District Court. Iowa Code § 364.22(6)(b). Iowa Code § 364.22(2) provides that a city "may provide that the violation of a city ordinance is a municipal infraction." The City has done so by implementing a general ordinance stating that violations of City ordinances are municipal infractions "subject to" the provisions of Iowa Code § 364.22. C.R. Mun. Code § 1.12. However, the City has also provided by specific ordinance, namely C.R. Mun. Code § 61.138 (e)(2), that a recipient of a notice of violation *may request* a municipal infraction be filed against them in order to contest the notice of violation in the Iowa District Court, Small Claims Division. The City has made a specific exception to its own Ordinance through the plain language of § 61.138(e)(2). Under that section, the recipient of a Notice of Violation has the option to insist or require that the violation be handled as a municipal infraction, but until a citation for a municipal infraction has been issued, Iowa Code § 364.22 does not apply. Therefore, the District Court did not err in holding that for purposes of due

process analysis, the notices of violations are not themselves municipal infractions and proceeding administratively does not require the process provided in Iowa Code § 364.22 for municipal infractions.

Outside of the statutory process, the court engages in the *Mathews* balancing test by first identifying the property interest at stake. There is no dispute that Plaintiffs have a property interest in the $75.00 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 $75.00 fine is not a particularly strong property interest. *Hughes*, 112 F. Supp. 3d at 846 ("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."). Contrary to Plaintiffs' assertions, the process due is not weighed against the cumulative fines from every notice of violation. The process due to each recipient of a notice of violation is judged by the $75 fine that person would receive.

Under the *Mathews* test, the Court next assesses the risk of erroneous deprivation of the property interest in question. Plaintiffs' first argument is that the risk of erroneous deprivation is high because the process provided by the administrative hearing is less sufficient than that provided by the Court. The most critical undisputed fact relevant to this argument is that the administrative

hearing process is not mandatory. It is optional and exists in addition to the right to demand the issuance of a municipal infraction. This feature of the ATE System is clearly stated in the plain language of the ATE Ordinance. In fact, despite Plaintiffs' erroneous assertions to the contrary, C.R. Code § 61.138(e)(2) expressly provides direct access to small claims court in lieu of the administrative process set out in the preceding paragraph (i.e. § 61.138(e)(1)), while the preceding paragraph also specifies that if a citation is sustained in the administrative hearing, the individual may either pay the fine or proceed with a municipal infraction. That Plaintiffs did not avail themselves of the municipal infraction in lieu of the administrative proceeding is of no consequence to the constitutional analysis. Plaintiffs' allegation that they are not given direct access to the Iowa District Court is simply incorrect.

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). And yet, Plaintiff Brooks was successful

in his administrative hearing and Plaintiffs Langston and Brodsky had one of their two notices of violation dismissed. (App. pp. 32, 43–44). This directly contradicts Plaintiffs' claim that the administrative process is meaningless.

Plaintiffs also assert that the risk of erroneous deprivation is strong because police officers are not making the initial determination as to whether a Notice of Violation is issued. (Pl. Br., p. 17.) This is patently false, as the record demonstrates. It is undisputed that a Cedar Rapids Police Officer determines whether or not a citation is issued. (App. pp. 66, 91, 504). Every Notice of Violation includes a "CERTIFICATE" by which a sworn member of Cedar Rapids' Police Department swears or affirms that s/he determined whether there was a violation of city code based upon her/his inspection of recorded images and radar data. (App. pp. 16, 26, 31, 35, 53, 55, 85).

In asserting a risk of erroneous deprivation, Plaintiffs' second argument is that Gatso does not forward to the City approximately 40% of the events the ATE System captures. (Pl. Br., p. 17.) Essentially, Plaintiffs are complaining that there is a risk of *non-enforcement* which could result in them *not* being deprived of their $75 property right. On its face, such an argument is fatally flawed. By definition, non-enforcement cannot create a risk of erroneous deprivation. The record shows there are three situations in which an event is not automatically flagged for Cedar Rapids police as a possible violation: (1) a license plate is not visible, so an Nlets search cannot be run; (2) the Nlets

search failed to identify a vehicle owner; and (3) the captured image shows an emergency vehicle with its lights on. (App. pp. 504–05). Moreover, these events are not discarded. The City has direct access to ATE records through Gatso's Xilium database. (App. p. 504.) The Cedar Rapids Police Department can review events that fall into these three categories at any time. (App. pp. 504–05).

Plaintiffs' third argument is that the risk of deprivation is high due to the general informality of the hearing. For purposes of a proper due process analysis, it is important to note that administrative hearings do not take the place of a municipal infraction except where the vehicle owner so chooses. Rather, an individual who does not obtain the desired result from an administrative hearing may still seek a court's determination based on the weight of clear, satisfactory and convincing evidence. In other words, the administrative hearing is an additional measure of due process beyond that of the small claims process, it is not instead of the small claims process. The administrative hearing leaves an individual no worse off and in fact in a significant number of cases actually affords an individual a finding of non-liability in less time, with less formality, and at lower cost. If an individual chooses *not* to exercise the right to proceed by means of a municipal infraction, that does not negate the fact she or he is afforded due process under the Ordinance which is more than constitutionally sufficient.

The *Mathews* balancing test also requires the Court to weigh the government's interest. Among other findings, the District Court found the City had 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 $75 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 and fair manner, the process provided through an administrative hearing or the Iowa District Court satisfies Plaintiffs' procedural due process rights.

To the extent Plaintiffs argue a procedural due process violation from allegedly inadequate notice of the ATE System, this claim fails. (Pl. Br. p. 42.) Procedural due process only entitles Plaintiffs to notice of the law (i.e., notice of the speed limits); it does not entitle them to notice of when and where the law will be enforced. *Cochran v. Illinois State Toll Highway Auth.*, No. 15-2689, 2016 WL 3648335, at *2 (7th Cir. July 8, 2016) (allegation that plaintiff was unaware of how toll system worked did not create due process violation: "Due

process does not require a state to post signage notifying all those entering of its laws and regulations. Rather, the statute or regulation is adequate notice in and of itself as long as it is clear."); *see also Becker v. Lockhart*, 971 F.2d 172, 174 (8th Cir. 1992) ("Due process . . . does require that laws provide notice to the ordinary person as to what constitutes prohibited activity."). "The onus is on citizens to inform themselves of the laws and regulations of the state in which they travel." *Cochran v. Illinois State Toll Highway Auth.*, No. 15-2689, 2016 WL 3648335, at *2 (7th Cir. July 8, 2016). There is no dispute that the speed limit is posted and the ordinance establishing the speed zone is published. The notice provided to Plaintiffs is adequate for procedural due process.

As part of its procedural due process analysis, the District Court found that Plaintiff Brooks lacked standing to assert a procedural due process claim. Plaintiffs assert this was error.

"[A] party must have sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Alons v. Iowa Dist. Court for Woodbury Cty.*, 698 N.W.2d 858, 863 (Iowa 2005) (internal quotations omitted). "[T]his means to '(1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.'" *Id.* (quoting *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004)).

The District Court correctly determined Plaintiff Brooks was not injuriously affected by the procedure provided. Plaintiff Brooks contested his

violation through an administrative appeal. (App. pp. 30–31). The administrative hearing officer dismissed his violation. (App. p. 32). Because Plaintiff Brooks was successful in contesting the Notice of Violation by means of the administrative process provided, he cannot show he was injured by that process, and therefore he lacks standing to bring a procedural due process claim.

Plaintiffs briefly argue that procedural due process was violated because the Ordinance creates an irrebuttable presumption that the registered owner of the vehicles is responsible for the traffic violation. (Pl. Br. p. 22). As threshold matter, none of the Plaintiffs have alleged they were not operating the vehicle at the time of the violation. Because Plaintiffs have not argued they were not operating the vehicles, and the District Court properly did not address this issue, this issue is not properly preserved for appeal.

If this Court finds Plaintiffs have preserved this issue, Plaintiffs' claims still fail as a matter of law. "Violations of traffic regulations fall squarely within a proper classification of public welfare offenses." *Iowa City v. Nolan*, 239 N.W.2d 102, 104 (Iowa 1976). "Not only may public welfare legislation dispense with a *mens rea* or scienter requirement, it may, and frequently does, impose a vicarious 'criminal' liability for the acts of another." *Id.* (finding registered owner may be vicariously liable for his illegally parked vehicle); *see also Fischetti v. Village of Schaumburg,* 967 N.E.2d 950, 959–60 (Ill. App. Ct. 2012)

(holding civil statute imposing liability on owner without exception did not violate substantive due process); *Morales v. Parish of Jefferson,* 140 So. 3d 375, 395 (La. Ct. App. 2014) (holding civil ATE ordinance imposing strict liability on owner does not violate substantive due process under Federal Constitution); *Krieger v. City of Rochester,* 978 N.Y.S.2d 588, 600–04 (NY Sup. Ct. 2013) (emphasizing civil nature of statute in concluding vicarious liability provision consistent with substantive due process); *City of Knoxville v. Brown,* 284 S.W.3d 330, 338–39 (Tenn. Ct. App. 2008) (holding civil ATE ordinance that makes owner of vehicle responsible regardless of who was driving does not violate substantive due process); *Gardner v. City of Cleveland,* 656 F. Supp. 2d 751, 760–61 (N.D. Ohio 2009) (citing *Idris* in rejecting substantive due process challenge to ordinance that imposes liability upon owner unless owner identifies driver who accepts liability); *Sevin v. Parish of Jefferson,* 621 F. Supp. 2d 372, 379–80, 383–84, 385–87 (E.D. La. 2009) (holding that if ordinance is criminal, it survives a due process challenge because the presumption of liability is rebuttable and the plaintiff made no argument that the permissive presumption was unconstitutional as-applied). Because the ATE citations are civil in nature and categorized as public welfare offenses, due process is not offended by an irrebuttable presumption of liability, even if Plaintiffs had properly raised this issue and preserved it for appeal.

## IV. Did the District Court Properly Conclude Gatso's Involvement Did Not Constitute an Unlawful Delegation of Police Power?

Plaintiffs argue the District Court erred by finding there was no unlawful delegation of police power because, Plaintiffs' argue, Gatso screens the violations, uses Nlets to look up license plate numbers, determines the speed at which to issue a citation, calibrates the equipment, and maintains a hotline. The District Court was correct in its finding that the particular tasks Gatso performs pursuant to the Contract are not an unlawful delegation of police power. Plaintiffs' arguments are either contrary to fact or do not amount to 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).

The Cedar Rapids Police Department determines whether it will issue a

citation, not Gatso. (App. pp. 66, 91.) Gatso has no authority and its administrative duties involve "little judgment or discretion." (App. p. 504); *Leaf*, No. CRCISC214393, at 10 (finding Cedar Rapids Police Department police officers make the ultimate decision as to whether to issue a notice of violation and "Gatso's participation is not an unconstitutional delegation of police power") (App. p. 74); *Lee*, No. CRCISC212558, at 7 (same) (App. p. 83). 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, like the Cedar Rapids 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* Cedar Rapids Municipal Code § 61.138(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.").

As noted, there are three situations when Gatso does not automatically flag an event to the Cedar Rapids Police Department as a possible violation: (1)

a license plate is not visible, so an Nlets search cannot be run; (2) the Nlets search failed to identify a vehicle owner; and (3) the captured image shows an emergency vehicle with its lights on. (App. pp. 504–05). In its discretion, the City has determined that in these three situations, the available evidence of a violation and/or the identity of the owner are not strong enough to proceed with enforcement. It is illogical to characterize as unconstitutional the City's exercise of discretion not to proceed in certain cases. Further, the events in these categories are not discarded. The Cedar Rapids Police Department can directly review them at any time. (App. pp. 504–05). The District Court specifically and correctly found that this screening process involved little discretion or judgment on Gatso's part. (App. pp. 516–17).

Plaintiffs also argue Gatso's use of the Nlets database constitutes an unlawful delegation of police power. Plaintiffs, however, have failed to explain how the use of the Nlets database involves judgment or discretion. The only evidence regarding the Nlets database is that Gatso employees type visible license plate number into the database in order to match the plate number with the registered owner. (App. pp 90–91.) Plaintiffs have no evidence—nor does any exist—that the Gatso's use of the Nlets database involves discretionary power conferred by law.

Plaintiffs assert that Gatso determines the vehicle speed for which citations should be issued. There is absolutely no evidence to support this

assertion, because none exists. Additionally, although Plaintiffs assert that enforcing the speed limit against vehicles traveling 12 miles per hour over the speed limit is at odds with Iowa law, there is no authority or other support 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. Nor would it be possible for the City to do so.

Plaintiffs argue that the City has delegated what they contend is the City's responsibility to calibrate the equipment. For this argument, Plaintiffs rely exclusively on a rule promulgated by the IDOT, the validity and applicability of which Defendants dispute. Defendants also dispute that Plaintiffs have any cause of action or other right to enforce or invoke an IDOT rule. Nonetheless, even if the rules in question are valid and applicable and even if Plaintiffs are the proper parties to enforce those rules against the City, Plaintiffs' argument is contrary to the evidence. The undisputed facts show the Cedar Rapids Police Department tests the calibration at least quarterly. (App. pp. 482–85). Furthermore, even if Plaintiffs had presented evidence that the City delegated this task, 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.

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 agrees it 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, maintain a website, 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 finding Plaintiffs' claim for unlawful delegation of police power failed as a matter of law.

## V. Did the District Court Properly Conclude the Ordinance Is Not Preempted by Iowa Code §§ 361.22, 602.6101, 321.230, 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). The District Court correctly found the Ordinance is not preempted by Iowa law. Plaintiffs claim the ATE system is preempted by or otherwise violates Iowa Code §§ 602.6101, 364.22(2) and (4), and 321.230. 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).

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, 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."

Providing the administrative hearing process does not take traffic

jurisdiction away from the Iowa District Courts and C.R. Code § 61.138 is not contrary to Iowa Code § 602.6101. *See Leaf*, No. CRCISC214393, at 6 ("Municipal Code § 61.138 is not an unconstitutional grant of jurisdiction") (App. p. 70); *Lee*, No. CRCISC212558, at 4–5 (same) (App. pp. 80–81). At most, it is an exercise of concurrent jurisdiction, which is expressly permitted by § 602.6101. *See Hughes*, 112 F. Supp. 3d at 849 (holding the ATE system does not take jurisdiction away from the Iowa District Court). Concurrent jurisdiction is "jurisdiction exercised by different courts, at the same time, over the same subject-matter, and within the same territory, and wherein litigants may, in the first instance, resort to either court indifferently." *State v. Stueve*, 260 Iowa 1023, 1030–31 (Iowa 1967). The administrative hearing is not "irreconcilable" with Iowa Code § 602.6101 because the Ordinance allows the recipient to contest the violation in Iowa District Court either instead of or in addition to the administrative hearing.

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 Cedar Rapids Police Officer, who electronically signed the bottom of the citation. (App. pp. 16, 26, 31, 35, 53, 55, 85). Plaintiffs' claims that the ATE system is in some manner contrary to § 364.22 are without merit. *See Hughes*, 112 F. Supp. 3d at

849 (finding ATE Ordinance consistent with § 364.22); *Leaf*, No. CRCISC214393, at 10 ("GATSO's participation is not an unconstitutional delegation of police power.") (App. p. 74); *Lee*, No. CRCISC212558, at 7 (same) (App. p. 83).

Plaintiffs also argue the District Court erred because the Ordinance is contrary to § 321.230, which provides:

> The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

Iowa Code § 321.230. Since the Ordinance does not exempt government vehicles from the ATE System, the Ordinance is not contrary to § 321.230. Arguments regarding the ATE System's underinclusiveness in practice are addressed in Section II(B).

## VI. Did the District Court Properly Conclude Plaintiffs' Unjust Enrichment Claims 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 Defendants on Plaintiffs' unjust enrichment claims.

As already discussed (and as established in two federal court proceedings), Plaintiffs' claims that the ATE system is unconstitutional or in violation of the law all fail. Therefore, Plaintiffs have no basis to suggest that payment of ATE citations or contractual payments are unjust. *See Hughes*, 112 F. Supp. 3d at 848 ("While Defendants may have been enriched at the expense of some Plaintiffs, such enrichment was not unjust because the Ordinance is constitutional."); *Brooks*, No. 15-CV-115-CRW, at 2 ("[P]laintiffs make no credible legal argument why Gatso is unjustly enriched by being compensated for providing and assisting both cities in their use of the ATE systems.").

Moreover, with respect to Gatso, fines paid by Plaintiffs are owed to the City, not Gatso. *See* Cedar Rapids, Municipal Code § 61.138(d)(2) (stating that fines are "payable to the city of Cedar Rapids"). Gatso is paid by the City, not the Plaintiffs, for services Gatso provides to the City.

Even if Plaintiffs were able to overcome these hurdles, Article II, Count III also fails as a matter of law as to Plaintiffs Olson and Smith because voluntary payment is a complete defense to an unjust enrichment claim. *Meyer v. Gotsdiner*, 226 N.W. 38, 39 (Iowa 1929); *Murphy, Neal & Co. v. Creighton*, 45 Iowa 179, 183 (Iowa 1876). It is undisputed that Plaintiffs Olson and Smith paid their citations. (App. pp. 64, 93). Because they have voluntarily paid their

citations, their unjust enrichment claim fails. Additionally, Plaintiff Brooks' citation was dismissed. (App. p. 32). Because he paid no fine, the Defendants cannot have been enriched at Plaintiff Brooks' expense.

## VII. Did the District Court Properly Conclude Plaintiffs' Failed to State a Claim for a Private Cause of Action Under the Iowa Constitution?

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 correctly found that there is no private cause of action under the Iowa Constitution. Plaintiffs assert a private cause of action under the Iowa Constitution based on the City's violations of the Iowa Constitution and Gatso's actions, allegedly under color of law. However, Plaintiffs' claim fails because no cause of action exists.

"[T]he constitution itself does not create a cause of action for a violation of its terms; rather, the legislature must pass laws in order for a remedy to exist. Consequently, the intent of our constitution is to rely on a legislative remedy rather than an implied judicial remedy for the existence of a private cause of action." *Conklin v. State*, 863 N.W.2d 301 (Iowa Ct. App. 2015). "[I]t would create a significant separation-of-powers issue were [the court] to judicially imply a remedy in the absence of a statute." *Id.* Because there is no private cause of action under the Iowa Constitution, the District Court correctly granted summary judgment in favor of Defendants.

## CONCLUSION

For the reasons stated above, the District Court should be affirmed in all respects.

## STATEMENT REGARDING ORAL ARGUMENT

Appellees request 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 Joint Final Brief of Appellees was $N/A and that the amount has been paid in full by Appellees.

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