IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

CITY OF SIOUX CITY, Plaintiff(s)/Appellant, VS. CRAIG KRUEGER, Defendant(s)/Appellee.	**03971SCCICV153246** **BRIEF IN SUPPORT OF APPEAL**

COMES NOW the City of Sioux City, and respectfully submits its Brief in support of its appeal:

STATEMENT OF THE CASE

On January 3, 2013, a vehicle registered to EAN Holdings (hereinafter "Enterprise") was captured by an automated traffic speed enforcement system in violation of Sioux City Municipal Code § 10.12.080. (*Ruling and Order*, p. 2; *Exhibit* 3; *Exhibit* 5; *Exhibit* 6; *S.C. Municipal Infraction*, p. 1). Enterprise nominated Craig Krueger as the individual who was driving the vehicle in question and the Notice of Violation was reissued to Craig Krueger on January 28, 2013. (*Exhibits* 1-4). After an administrative review hearing pursuant to Sioux City Municipal Code § 10.12.080(4) a civil municipal infraction citation was filed with the Clerk of Court on February 20, 2013. (*S.C. Municipal Infraction*, p. 1). Pursuant to Iowa Code § 364.22(6), the above captioned matter was placed on the small claims docket in District Associate Court. On

June 12, 2013 this matter proceeded to trial before the Honorable John C. Nelson, District Associate Judge for the Third Judicial District of Iowa. (*Ruling and Order*, p. 1).

Following a non-jury trial on June 12, 2013, the Judge Nelson issued a Ruling and Order, which was filed on July 3, 2013. (*Ruling and Order*, p. 1). The City filed a timely Notice of Appeal and request for oral argument on July 16, 2013. (*Notice of Appeal*, p. 1).

STATEMENT OF THE FACTS

On January 3, 2013, at approximately 9:26 a.m. Craig Krueger operated a motor vehicle on Interstate 29 in the City of Sioux City, Iowa. (*Ruling and Order*, p. 2). The motor vehicle was registered to Enterprise Rent-A-Car. (*Ruling and Order*, p. 2). An automated traffic speed enforcement system was deployed on Interstate 29 at mile marker 149. (*Exhibits* 3, 5-7). The posted speed limit at that location was 55 miles per hour. (*Ruling and Order*, p. 2). Mr. Krueger was driving 66 miles per hour when he passed mile marker 149. (*Ruling and Order*, p. 2).

STANDARD OF REVIEW

The standard of review for a trial court's interpretation of a statute is for correction of legal errors. *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011). In appeals governed by the Rules of Procedure for Small Claims "The judge shall decide the appeal without regard to the technicalities or defects which have not prejudiced the substantial rights of the parties, and may affirm, reverse, or modify the judgment, or render judgment as the judge or magistrate should have rendered." *Iowa Code* § 631.13(4)(a).

ISSUES PRESENTED ON APPEAL

1.) Sioux City Municipal Code § 10.12.080 satisfies the due process test articulated by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47

L.Ed.2d 18 (1976) and adopted by the Iowa Supreme Court in *State v. Hernandez-Lopez*, 639 N.W.2d 226, 240 (Iowa 2002).

2.) Judge Nelson incorrectly interpreted the plain language of Municipal Code § 10.12.080, the meaning of which is fairly ascertainable by the use of generally accepted and common meaning of the words used.

3.) Substantial evidence exists in the record to impose civil liability on Craig Krueger because the City proved by clear, convincing, and satisfactory evidence that a violation of Municipal Code § 10.12.080 occurred, and the rational connection in the evidence showed that Craig Krueger was driving the motor vehicle at the time of the violation.

ARGUMENT

Iowa municipalities are granted home rule power pursuant to *Iowa Const. Art. III*, § 38A. "When an ordinance is challenged on constitutional grounds, a presumption of constitutionality exists that can only be overcome by negating every reasonable basis upon which the ordinance could otherwise be sustained." *Ackman v. Bd. of Adjustment for Black Hawk County*, 596 N.W. 2d 96, 104 (Iowa 1999), quoting *Cyclone Sand & Gravel Co. v. Zoning Bd. of Adjustment*, 351 N.W.2d 778, 780 (Iowa 1984). "A strong presumption of constitutionality inheres in legislative enactments, and there is a heavy burden on a party who seeks to overturn one." *Agomo v. Fenty*, 916 A.2d 181, 193 (D.C. 2007). "'Statutes are cloaked with a presumption of constitutionality.'" *State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2005), quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002). Sioux City Municipal Code § 10.12.080 satisfies the due process test articulated by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) and provides adequate notice of the

rights and process available to an individual who is the recipient of a Notice of Violation. The City proved a violation of Municipal Code § 10.12.080 by clear, convincing, and satisfactory evidence, and liability should be imposed against Craig Krueger pursuant to the rational connection shown in the evidence.

1. Sioux City Municipal Code § 10.12.080.

The City Council of the City of Sioux City enacted Ordinance 2011-0132 in February 2011. This created Municipal Code § 10.12.080, Automated Speed Enforcement, to provide for safe traffic flow and civil enforcement of posted speed limits within the City of Sioux City. A "violation" is a defined term and "occurs when a vehicle traveling on a public roadway exceeds the applicable speed limit." *S.C. Municipal Code* § 10.12.080(3)(a). Civil liability is imposed upon the "vehicle owner or nominated party" pursuant to § 10.12.080(3)(b).

2. Automated Speed Enforcement Action is Civil in Nature.

A violation under the Sioux City ATE speed ordinance is civil in nature. S.C. Municipal Code § 10.12.080(4)(a) states a "[v]iolation of subsection (3)(a) of this section shall be considered a civil violation." A vehicle owner or nominated party who receives a notice of violation may dispute this notice by requesting a hearing with the designee of the chief of police. *S.C. Municipal Code* § 10.12.080(4)(b). The designated hearing officer then schedules a hearing which may be held in person or telephonically at the request of the vehicle owner or nominated party, after which a written decision is issued. *S.C. Municipal Code* § 10.12.080(4)(b-c). The vehicle owner or nominated party may then appeal this decision and request review by a judicial court. *S.C. Municipal Code* § 10.12.080(4)(c-d) At this point a civil municipal infraction citation is filed with the Clerk of Court and the matter is heard before a district associate judge

or magistrate pursuant to the rules of civil procedure for small claims. *S.C. Municipal Code* § 10.12.080(4)(d); *Iowa Code* § 364.22(6). If the City has proved the violation by clear, convincing, and satisfactory evidence the vehicle owner or nominated party is found liable by the court and the violation is not reported to the Iowa Department of Transportation for the purposes of being added to the vehicles owner's or nominated party's driving record. *S.C. Municipal Code* § 10.12.080(3)(d).

The Supreme Court of the State of Iowa reviewed a similar automated traffic enforcement program in the *City of Davenport v. Seymour*, 755 N.W.2d 535 (Iowa 2008). While the sole issue before the Supreme Court in Seymour was whether Iowa Code Chapter 321 preempted the City of Davenport's ATE ordinance (the Court held that a civil ATE ordinance was not preempted by Iowa Code Chapter 321), the Court repeatedly referred to the ATE regulatory scheme as civil in nature. *See Id*. at 353, "the city levels civil penalties against owners of vehicles that fail to obey red light traffic signals or violate speed laws;" *Id.* at 537,"a vehicle owner is issued a notice and is liable for a civil fine;" *Id*. at 541, "the Davenport ATE ordinance creates civil penalties while state law provides only for criminal violations." In affirming the decision of the trial court the Supreme Court expressly reserved judgment and expressed no view on any other constitutional issue.

3. § 10.12.080 Provides Adequate Due Process under the *Mathews'* Test.

Judge Nelson has raised and asserted what is essentially a due process argument for the Defendant. This issue was raised after the record was closed and the City was not provided an opportunity to respond to the questions raised by the court. This is evident by the record in this case. The trial lasted approximately two hours and twenty minutes. The transcribed

proceeding is approximately 82 pages long. While Mr. Krueger argued a great many things, including whether January 1, 2013, was a Tuesday and whether January 3, 2013, was a Thursday, at no point did he raise and assert a due process defense pertaining to the nomination procedures, nor did Mr. Krueger present any evidence that would overcome the strong presumption of the constitutionality of this legislative enactment.

The Iowa Supreme Court has not directly addressed due process issues in the context of automated traffic enforcement systems, but courts in other jurisdictions have. The District of Colombia maintains an ATE program that was challenged on due process grounds in *Agomo v. Fenty*, 916 A.2d 181 (D.C. 2007). Vehicle owners Emelike Agomo, whose vehicle was captured speeding at least 18 separate times, and Auto Ward, Inc., whose vehicles were captured by both automated red light and speed enforcement systems over 100 times, asserted a violation of their due process rights and claimed that the statutory scheme created "an irrebuttable presumption of liability with [the] conclusive effect on adjudicative determinations by DMV hearing examiners." *Id*. at 189 (*internal quotations marks removed*). The trial court entered summary judgment in favor of the District of Columbia, and Agomo and Auto Ward appealed.

The District of Columbia Court of Appeals began its review by examining the ATE statutory scheme in question. It found that the enforcement process was initiated when an ATE system captured a violation of red light or speeding law. The data recorded was then transmitted to a third-party vendor that maintained the ATE systems, who checked the data for any errors or defects and obtained the vehicle information. *Id*. at 195. That information is then forwarded to a Metropolitan Police Department (MPD) officer who determines whether a notice of violation should be issued. *Id*. at 189. When the registered owner of a vehicle receives

a notice of violation that individual may admit the violation or "request (1) a hearing, (2) mail adjudication, or (3) outright dismissal or the ticket, on the basis of the vehicle having been "stolen prior to the issuance of the citation," or that the "vehicle was not in my custody, care, or control at the time of the infraction." *Id*. at 187, quoting language on the D.C. notice of violation. "If the owner wishes to claim that s/he was not the driver, s/he must complete the very bottom portion of the ticket, submitting a notarized certification with the name and address of the "actual driver." *Id*. at 187. If another individual is nominated as the actual driver "the vehicle owner is noted as having identified a 3rd party as responsible for the violation; and … a new [ticket] is issued to the other individual identified as the driver." *Id*. at 189, quoting declaration of Matthew Hopwood, ACS Senior Manager. Additionally, a registered owner or nominated party may ultimately appeal an adverse hearing decision to the District of Columbia Superior Court, where the burden of proof of clear and convincing evidence is on the District of Columbia. *Id*. at 184-185.

In its due process analysis the court examined whether the notice of violation procedure impermissibly shifted the burden of proof to the registered owner of the vehicle or the nominated party. *Id*. at 193. It noted that much of Agopo and Auto Ward's brief focused:

> "on the "presumptions of innocence" that are applicable in criminal proceedings. It is clear, however, that violations under the ATE System impose only civil liability in the form of a modest fine, and thus analysis under the rubrics of criminal law is inappropriate. *See District of Columbia v. Hudson*, 404 A.2d 175, 179 n. 6 (D.C. 1979)(en banc)("presumption of innocence in a criminal prosecution has not place in a civil proceeding…"). *Id*. at 193.

Instead, the Court of Appeals determined the appropriate test for determining whether due process procedures were adequate in the ATE statutory scheme was articulated by the United

States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). It is this test that was adopted by the Iowa Supreme Court in *State v. Hernandez-Lopez*, when it stated "in determining what process is due under a statute, we apply the test pronounced by the United States Supreme Court in *Mathews v. Eldridge*." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 240 (Iowa 2002)(holding the material witness statute satisfied both substantive and procedural due process requirements), *see Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 691 (Iowa 2002).

In *Mathews* the Supreme Court established three factors that are to be balanced in determining whether due process procedures are adequate. They are:

1.) "The private interest that will be affected by the official action;"

2.) "The risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural standards;" and

3.) "The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail."

Mathews at 335.

The Court of Appeals noted that the Appellant's did not contest the trial court's holding that the process provided by the ATE statutory scheme satisfied the Mathews due process balancing test. The trial court held,

1.) "the private interest involved is small in the respect that a red-light violation carries only a $75 civil penalty with no points;"

2.) "no concern [has been identified in the complaint] that cannot be addressed through the DMV's quasi-judicial administrative hearing process and subsequent judicial review provided by statute; and"

3.) "the District's interest in deterring the life-threatening activity of red light running and speeding is significant."

Id. at 191.

The court found this to be within the concept of due process that the United States Supreme Court has embraced in civil matters. *Id*. at 191.

With the Court of Appeals satisfied that proper due process protections had been provided under the *Mathews*' test it turned to the question of civil liability. The appellant's in *Agomo* argued that the District of Columbia ATE statutory scheme created an irrebuttable presumption of liability against the owner of the motor vehicle, thereby making the identity of the driver irrelevant and violating due process. *Agomo* at 192. The Court of Appeals disagreed, instead finding that the plain language of the ATE statutory scheme created "a rebuttable presumption that the car used in the infraction was in the custody, care, or control of the registered owner, and it imposes vicarious liability on that basis." *Id*. at 192. The Court went on to state that there is not strict vicarious liability under the ATE statuory scheme, but "a rebuttable presumption that the vehicle was in the custody, care, or control of the registered owner, and unless the owners rebuts that presumption, liability is vicariously imposed." *Id*. at 192.

Furthermore, the Court of Appeals noted that the Supreme Court has affirmed that systems of vicarious liability may impose civil liability without offending the notions of due

process, so long as these systems are not so shocking to the conscience. *Id*. at 193. Quoting *Louis Pizitz Dry Goods Co. v. Yeldell*, 274 U.S. 112, 115, 47 S.Ct. 509, 71 L.Ed. 952 (1927), the Court affirmed that "[T]he extension of the doctrine of liability without fault to new situations to attain a permissible legislative object is not so novel in the law or so shocking 'to reason or to conscience' as to afford in itself any ground for the contention that it denies due process of law." *Agomo* at 193. The Court held that a "legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed." *Id*. at 195, referencing *Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed*, 219 U.S. 35, 43, 31 S.Ct. 136, 55 L.Ed. 78 (1910). Like courts in other jurisdictions, Iowa courts have long recognized vicarious liability in when motor vehicles are involved in civil matters. *See Beganovic v. Muxfeldt*, 775 N.W.2d 313 (Iowa 2009); *Briner v. Hyslop*, 337 N.W.2d 858 (Iowa 1983); *Seleine v. Wisner*, 200 Iowa 1389, 206 N.W. 130 (1925).

Finding that it was entirely rational to presume that a motor vehicle is in the care, custody, or control of the registered owner, the Court found the ATE statutory scheme provided "ample leeway for the defendant to rebut the presumption by identifying a third-party driver." *Id*. at 193. The Court found this consistent with the Supreme Court's holding in *Turnipseed* in that the "presumption is valid as long as it does not preclude a defense." *Id*. at 193. In allowing the registered owner to report the vehicle as stolen or to rebut the presumption by nominating a third-party the Court found the liability provisions to be rationally related to the governmental interest and rationally connected between the fact proved (the red-light or speed violation) and the ultimate fact presumed (the individual responsible for the

care, custody, or control of the motor vehicle). Quoting *Chicago v. Hertz Commercial Leasing Corp*., 71 Ill.2d 333, 17 Ill.Dec 1, 375 N.E.2d 1285, 1291, *cert. denied*, 439 U.S. 929, 99 S.Ct. 315, 58 L.E.2d 322 (1978), "[t]he public has a right to expect that a vehicle owner who voluntarily surrenders control of his vehicle to another is in the best position both to know the identity and competence of the person to whom he entrusts the vehicle." *See also Shavitz v. City of High Point*, 270 F. Supp. 2d 702, 179 Ed. Law Rep. 723 (M.D. N.C. 2003), order vacated on other grounds, 100 Fed. Appx. 146, 189 Ed. Law Rep. 71 (4th Cit. 2004)(presumption of liability under a civil ATE ordinance and state statute did not violate due process, even though the vehicle owner had the burden of proving that the owner was not operating the vehicle at the time of the violation. The threshold issue was whether the statutory scheme was civil or criminal in nature.); *State v. Dahl*, 336 Or. 481, 87 P.3d 650 (2004)(A rebuttable presumption of liability under an ATE statutory scheme did not violate due process because the action was civil in nature. All that was required was a rational connection between the fact proved and the fact presumed.); *compared with People v. Hildebrandt*, 308 N.Y. 397, 126 N.E.2d 377, 49 A.L.R.2d 449 (1955)(ATE statutory scheme as part of the criminal code violated due process because it was criminal in nature.).

The Court of Appeals also addressed the argument that the liability system under the ATE statutory scheme violated the clear and convincing proof required in case of this nature. *Id*. at 192. The Court referenced D.C.Code § 50-2302.06(a) which states that "no infraction shall be established except by clear and convincing evidence." The Court of Appeals stated "appellants confuse proof of the violation with the imposition of liability. The statutory mechanism for assessing liability once an infraction has been established in no way affects the requirement

that the District prove the commission of a traffic infraction by clear and convincing evidence." *Id*. at 192-193.

The ATE statutory scheme maintained by the District of Columbia in *Agomo* is very similar to the ATE statutory scheme maintained by the City of Sioux City in the present case. Like the statute in question in Agomo, a violation occurs under Sioux City Municipal Code § 10.12.080 when a vehicle exceeds the applicable speed limit. Like *Agomo*, an individual who receives a notice of violation may dispute that violation through a hearing and appeals process that may ultimately include judicial review. Like *Agomo*, the City bears the burden of proving a violation of the ATE ordinance by clear, convincing, and satisfactory evidence. Like *Agomo*, the ATE statutory scheme maintained by the City is expressly civil in nature, and imposes a modest financial penalty as opposed to incarceration or a substantial monetary fine. Like *Agomo*, Municipal Code § 10.12.080 imposes liability upon the registered owner of a motor vehicle or other nominated party involved in a municipal infraction. And like the statutory scheme in *Agomo*, civil liability may be transferred to an individual who maintained care, custody, and control of the motor vehicle. (*See Exhibit* 4, paragraph B "if the registered owner was not operating the vehicle at the time of violation, the liability may be transferred to the driver of the vehicle…"; S.C. Municipal Code § 10.12.080(3)(b) "The vehicle owner or nominated party shall be liable…").

When a civil municipal infraction is proven by clear, convincing, and satisfactory evidence, S.C. Municipal Code § 10.12.080(3)(b) requires the vehicle owner or nominated party to be liable for a civil penalty. Liability may be assessed to a vehicle owner or nominated party when there is a rational connection between the proven fact (the municipal infraction) and the

ultimate fact presumed (the individual who maintained care, custody, or control of the motor vehicle).

Judge Nelson may disagree with the rights, procedures, and process advanced by the City under Municipal Code § 10.12.080, and he may prefer additional or alternative language in the ordinance. (*Ruling and Order*, p. 2-3). But that is not sufficient reason to dismiss a civil municipal infraction or overturn an ordinance. When a fundamental right is not implicated a statute or ordinance need only survive the rational-basis test. *Hensler v. City of Davenport*, 790 N.W.2d 569 (Iowa 2010). This test requires the court to consider "whether these is 'a reasonable fit between the government interest and the means utilized to advance that interest.'" *Seering* at 662 (quoting *Hernandez-Lopez* at 238). The legislative body need not utilize the best means of achieving its interest 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.'" *Sanchez v. State*, 692 N.W.2d 812, 818 (Iowa 2005)(quoting *Schweiker v. Wilson*, 450 U.S. 221, 235 101 S.Ct. 1074, 1083, 67 L.Ed.2d 186, 198 (1981).

4. The Plain Language of Municipal Code § 10.12.080 Provides Adequate Notice of the Rights, Responsibilities, and Options of a Nominated Party.

Judge Nelson held that because the term "nominated party" was only used once in Municipal Code § 10.12.080 that he was unaware of what "rights, responsibilities, and options" a nominated party would have upon receipt of a Notice of Violation. (*Ruling and Order*, p. 2). The plain language of the ordinance does not establish such a limited procedure as Judge

Nelson has interpreted, nor does the City take such a limited view in interpreting the ordinance it validly passed and administers. Neither should this Court.

Municipal Code § 10.12.080(4) establishes the framework and due process available to a party who receives a Notice of Violation. Subsection 4, paragraphs "b," "d," and "e" provide these rights to a "recipient" of an ATE Notice of Violation. (See *Municipal Code* §§ 10.12.080(4)(b) "A *recipient* of an automated speed enforcement citation…"; 10.12.080(4)(d) "Such a request will result in a required court appearance by the *recipient*…"; 10.12.080(4)(e) "If a *recipient* of an automated speed enforcement citation…"(emphasis added)). Contrary to the interpretation by Judge Nelson, the ordinance does not limit these rights, responsibilities, and options to a registered owner, but extends them to any recipient of a Notice of Violation, whether that individual is a vehicle owner or a nominated party.

It is also not necessary that the legislative body list every specific right, procedure, definition, or explanation in a statute or ordinance. Exact procedures and the content of notices can be promulgated administratively, or the legislative body can rely on the general meaning and common usage of the terms the legislature utilizes. A contract governing the operation of ATE systems and the relationship between the City of Sioux City and Redflex Traffic Systems, Inc. was passed and approved by the City Council on December 28, 2006, after proper notice and opportunity to comment from the public. *Sioux City Resolution No.* 2006-000910. This contract was amended following the same procedure on February 28, 2011. *Sioux City Resolution No.* 2011-000169. The City has also established business rules with Redflex Traffic Systems, Inc. which are available as a public record, and clearly states on its website "2. Nominate another: If the registered owner was not operating the vehicle at the time of the

violation, they can notify the Sioux City Police Department of who the driver was and the violation will be forwarded to them. 3. Appeal & Court Appearance: If the violator wishes to appeal the violation…" *See* Sioux City Police Department, *Photo Enforcement Website*, http://www.siouxcitypolice.com/photo-enforcement.html.

Additionally, every recipient of an ATE citation is notified by the same Notice of Violation form. (*Exhibits* 1 – 4). It is a form that is provided to every recipient, whether that individual is a vehicle owner or nominated party. This form is also clear in explaining the rights and options that are available to the recipient of such a notice. On *Exhibit* 4, clearly labeled "Instruction Page," the recipient is informed why they have received this notice. "A vehicle registered in your name was photographed exceeding the posted speed limit *or the registered owner of the vehicle depicted on this Notice has submitted an Affidavit naming you as the driver of the vehicle at the time of the violation*." (*Exhibit* 4, *Paragraph* 1 (*emphasis added*)). Paragraph 3(B) describes the nomination process. Included in this description is the instruction, "If another driver is identified, liability can only be transferred if the nominated driver *accepts the responsibility*." (*Exhibit* 4, *Paragraph* 3(B)(*emphasis added*)). And Paragraph 3(C) informs the recipient that he or she has a right to a hearing. "*You* have a right to a hearing to dispute this notice:" (*Exhibit* 4, *Paragraph* 3(C)(*emphasis added*)). Of particular importance is that "you," as the recipient of the notice, have a right to a hearing. This right is not limited to the "vehicle owner."

It is not an uncommon occurrence for the recipient of a Notice of Violation to exercise his or her rights and appeal the violation to the District Associate Court. This ordinance has existed since February 2011, and more often than not there are multiple ATE trials scheduled

each month. The courts have consistently held that Municipal Code § 10.12.080(4) provides the recipient of an ATE Notice of Violation adequate notice of their rights, responsibilities, and options when the recipient is a vehicle owner. Why then, would that same section fail to provide the recipient of an ATE Notice of Violation adequate notice of their rights, responsibilities, and options when the recipient is a nominated party.

The City admits that some of the language on the standard Notice of Violation form could be clarified. But this should not be a fatal blow to the City's case, as it has not infringed or prejudiced the substantial rights of Mr. Krueger. Perhaps most importantly in the present case, the very fact that Mr. Krueger was provided a trial in this matter where the City was required to prove the violation by clear, convincing, and satisfactory evidence is proof that Mr. Krueger was not only aware of his "rights, responsibilities, and options," but that he chose to exercise those "rights, responsibilities, and options" to the fullest extent available to him.

5. Substantial Evidence Exists in the Record to Find that Craig Krueger is a Nominated Party as Contemplated by Municipal Code § 10.12.080.

Judge Nelson found that the "city presented no evidence that would suggest a "nomination" occurred herein." (*Ruling and Order*, p. 2). This finding is not supported by substantial evidence in the record.

Sioux City Municipal Code § 10.12.080(3)(a) defines a violation as "A violation occurs when a vehicle traveling on a public roadway exceeds the applicable speed limit." It is this that the City must prove by clear, convincing, and satisfactory evidence, and the City has done so in the present case. (*See also* Municipal Code § 10.12.080(4)(a) "Violation of subsection (3)(a) of this section shall be considered a civil violation…"). The Court found "On January 3, 2013, at

approximately 9:26 a.m., the Defendant drove a Corolla owned by Enterprise Rent-A-Car on I-29 within the city limits of the city of Sioux City, Iowa… The Defendant was driving 66 miles per hour when he passed mile marker 149. The speed limit at that location on that date and time was 55 miles per hour." (*Ruling and Order*, p. 2).

With the violation proved by clear, convincing, and satisfactory evidence, we must turn to the question of liability. Exhibit 4, Paragraph 1, admitted into evidence, provides only two reasons why an individual has received a Notice of Violation. It states, "A vehicle registered in your name was photographed exceeding the posted speed limit or *the registered owner of the vehicle depicted on this Notice has submitted an Affidavit naming you as the driver of the vehicle at the time of the violation*." (*Exhibit* 4, *emphasis added*). It is not disputed that Mr. Krueger is not the registered owner of the motor vehicle in question. Therefore, the only way for him to have received a notice of violation was by nomination. Additionally, Sgt. William Melville testified that Mr. Krueger requested a different address to be used for the civil municipal infraction and court mailings than the one that was initially provided and was on the Notice of Violation. (see *Exhibits* 1, 3, and 8; compare with *Municipal Infraction Citation* and numerous letters from the Defendant to the Court that are part of the record.) Sgt. Melville stated, "He wanted a different mailing address used than the address that *we had initially been provided with*." *Recording of Court Proceeding*, 1:36:23; *Transcribed Proceeding*, p. 60. The rational implication of this statement is that Enterprise provided the information used to populate the Notice of Violation that was sent to Mr. Krueger, *Exhibits* 1-4.

Sgt. Melville also stated that he used information "obtained either *from other documents* or from Mr. Krueger" (emphasis added) to issue the civil municipal infraction

citation and that Exhibit 8 is a "rental agreement that was e-mailed to me from Enterprise Rent-A-Car." Recording of Court Proceeding 1:37:41 and 1:39:49; Transcribed Proceeding, p. 61 and 62.

Finally, the very fact that Mr. Krueger was present in court is itself evidence that he accepted responsibility for the violation. (see *Exhibit* 4, "If another driver is identified, liability can only be transferred if the nominated driver accepts the responsibility."). Most importantly, Mr. Krueger never contested his presence on Interstate 29 on January 3, 2013 or his rental of the vehicle from Enterprise. He did not raise a due process argument pertaining to the nomination procedure at trial, and presented no credible evidence that the procedure provided to him substantially infringed upon his rights.

Enterprise Rent-A-Car nominated Mr. Krueger as the driver of the vehicle at the time the violation occurred using the standard forms provided to them. Yet even if this Court upholds all of Judge Nelson's factual findings, the City has still met its burden. Judge Nelson held, "The evidence presented at trial shows that the automated speed enforcement citation was issued directly to this Defendant and was not a consequence of the nomination process. The police may have investigated this matter and determined the Defendant was the driver, but the court is not convinced that he is a "nominated party" as contemplated by the city ordinance." If this were the case, Enterprise Rent-A-Car would have still provided Mr. Krueger's information to the police department, and would have still told the police department that Mr. Krueger was responsible for the care, custody, and control of the vehicle at the time the violation occurred. How is this not a nomination?

It is irrational and arbitrary to find by clear, convincing, and satisfactory evidence that Mr. Krueger exceed the speed limit while operating a motor vehicle on a public roadway in the City of Sioux City, then dismiss the case because the City did not specifically call him a "nominated party." Substantial evidence exists in the record to establish Craig Krueger as a nominated party and judgment should be entered in favor of the City.

CONCLUSION

A strong presumption of constitutionality inheres in legislative enactments, and one who seeks to overturn an action by an elected body bears a heavy burden. While Mr. Krueger made several arguments during the course of a trial that lasted over two hours, he at no point raised and argued a due process or notice violation that was the result of his status as a nominated party. This issue was raised sua sponte by the trial court after the record was closed and the City was not provided an opportunity to rebut the Court's assumptions.

The City maintains a civil automated traffic enforcement system that is rationally related to the lifesaving purpose of deterring the activities of red-light running and speeding in construction zones. The civil liability imposed under this system satisfies the *Mathews'* test and rest upon a valid presumption of liability. If a violation of the Sioux City Municipal Code § 10.12.080(3)(a) is proved by clear, satisfactory, and convincing evidence liability should be imposed upon the rational connection shown in the evidence. In the present case, Judge Nelson found the Mr. Krueger was operating the motor vehicle when a violation of Municipal Code § 10.12.080. The court committed clear error in its interpretation of Municipal Code § 10.12.080 and filed a Ruling and Order that was not supported by the substantial evidence in the record.

For these reasons the City of Sioux City respectfully request the court to reverse the decision of the Honorable John C. Nelson, District Associate Judge for the Third Judicial District of Iowa, and enter judgment in favor of the City of Sioux City, with a civil penalty of $168.00 inclusive imposed against the Defendant/Appellee, Craig Krueger.

Respectfully submitted this 7th of August, 2013.

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ATTORNEY FOR PLAINTIFF
CITY OF SIOUX CITY, IOWA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served on each person listed below by enclosing the same in an envelope addressed as shown below with postage fully prepaid, and by depositing said envelope in a United States depository in Sioux City, Iowa, on the 7th of August, 2013.

Name: Craig Krueger
Address: P.O. Box 3153
Fort Lee, New Jersey 07024

/S/ Ryan Wiesen