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## THE SEVENTH CIRCUIT GIVES THE GREEN LIGHT TO RED LIGHT CAMERAS: AN ANALYSIS OF THE COURT'S APPLICATION OF THE RATIONAL-BASIS TEST TO RED LIGHT CAMERA LAWS

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### INTRODUCTION

The safety of motorists, passengers, and pedestrians on roadways is a major concern and focus of public policy. In fact, over one million fatalities occur every year on roads around the world.<sup>1</sup> A leading cause of these fatalities in the United States is drivers who speed through red lights;<sup>2</sup> on average, one thousand people are killed and over one hundred and fifty thousand people are injured in crashes that involve drivers running red lights each year.<sup>3</sup> In an effort to prevent these accidents, communities throughout the country have begun to

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<sup>1</sup> WORLD HEALTH ORGANIZATION, WORLD REPORT ON ROAD TRAFFIC INJURY PREVENTION (2004), <http://www.who.int/world-health-day/previous/2004/en>.

<sup>2</sup> MELISSA SAVAGE, NATIONAL CONFERENCE OF STATE LEGISLATURES, AUTOMATED TRAFFIC ENFORCEMENT (2004), <https://ecom.ncsl.org/programs/transportation/0700trnrvt.htm>

<sup>3</sup> INSURANCE INSTITUTE FOR HIGHWAY SAFETY, Q&A'S: RED LIGHT CAMERAS (2009), <http://www.iihs.org/research/qanda/rlr.html>.

implement automated enforcement technology systems, such as red light cameras.<sup>4</sup>

Currently, lawmakers and private citizens are engaged in a nationwide debate over the constitutionality of red light camera legislation.<sup>5</sup> Proponents believe red light camera laws are not only constitutional but are also effective in deterring illegal conduct and promoting public safety.<sup>6</sup> Legislatures in twenty-three states agree with the proponents, already having passed legislation allowing for local governments to utilize red light camera systems,<sup>7</sup> and legislatures in six states are debating action to permit such systems.<sup>8</sup> However, opponents of red light cameras argue that these laws violate constitutional rights because red light camera laws fail to pass the rational-basis test required of all legislation.<sup>9</sup> In particular, critics maintain that there is no legitimate governmental purpose behind red light camera laws.<sup>10</sup> Rather than promoting public safety, deterring illegal conduct or enforcing traffic laws, opponents claim the real purpose of red light camera legislation is the generation of revenue for local governments.<sup>11</sup>

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<sup>4</sup> CAROLINE J. RODIER & SUSAN A. SHAHEEN, AUTOMATED SPEED ENFORCEMENT IN THE U.S.: A REVIEW OF THE LITERATURE ON BENEFITS AND BARRIERS TO IMPLEMENTATION, 3 (CA Transportation Research Board ed.) (2007).

<sup>5</sup> Larry Copeland, *Red-Light Cameras Bring Backlash*, USA TODAY, Feb. 14, 2007, [http://www.usatoday.com/news/nation/2007-02-14-redlightside\\_x.htm](http://www.usatoday.com/news/nation/2007-02-14-redlightside_x.htm).

<sup>6</sup> INSURANCE INSTITUTE FOR HIGHWAY SAFETY, *supra* note 3.

<sup>7</sup> RODIER & SHAHEEN, *supra* note 4, at 3.

<sup>8</sup> Connecticut, Hawaii, Mississippi, New Jersey, Oklahoma, and Virginia are considering red light camera programs. *Id.*

<sup>9</sup> Copeland, *supra* note 5.

<sup>10</sup> NATIONAL MOTORISTS ASSOCIATION, REVENUE DRIVERS RED LIGHT CAMERAS, NOT SAFETY (2001), <http://www.motorists.org/pressreleases/home/revenue-drives-red-light-cameras-not-safety/>. The rational-basis test is the least rigorous standard of review applied by courts to determine if challenged laws are constitutional. To pass rational-basis scrutiny government action must be rationally related to a legitimate governmental interest. *Doe v. City of Lafayette*, 377 F.3d 757, 773 (7th Cir. 2004) (quoting *Lee v. City of Chicago*, 330 F.3d 456, 467 (7th Cir. 2003)).

<sup>11</sup> NATIONAL MOTORISTS ASSOCIATION, *supra* note 10.

Federal courts have been reluctant to address the constitutionality of red light camera laws.<sup>12</sup> In fact, the Seventh Circuit is the first Federal court of appeals to consider whether a red light camera ordinance meets the requirements of the rational-basis test under equal protection and due process jurisprudence.<sup>13</sup> In *Idris v. City of Chicago*, car owners, who were not driving their cars at the time of a violation, were fined pursuant to a city ordinance permitting the use of red light cameras.<sup>14</sup> The car owners brought an action against the City<sup>15</sup> claiming that the ordinance violated the equal protection and due process clauses of the United States Constitution.<sup>16</sup> In applying the rational-basis test, the court held that the ordinance did not violate due process and that the ordinance and its classifications were rationally related to the City's goals.<sup>17</sup>

This note considers whether the Seventh Circuit's application of the rational-basis test to the Chicago red light camera ordinance was appropriately conducted. Part I of this note provides a contextual background of red light camera systems and the rational-basis test applied to all legislation. Part II analyzes the facts, procedural history and holding of the recent Seventh Circuit case, *Idris v. City of Chicago*. Part III argues that although the Seventh Circuit reached the correct conclusion, the court did not fully apply the rational-basis test to the ordinance. Further, Part III expands upon the Seventh Circuit's reasoning by considering additional arguments raised by red light

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<sup>12</sup> See *Dajani v. Governor and Gen. Assembly of MD*, No. Civ.CCB-00-71, 2001 WL 85181, at \*4 (D. Md. Jan. 24, 2001) (dismissing a challenge to red light camera law for lack of federal jurisdiction); *Shavitz v. City of High Point*, 270 F. Supp. 2d 702, 725 (M.D.N.C. 2003) (holding that appellant lacked standing to challenge red light camera statute).

<sup>13</sup> *Idris v. City of Chicago*, 552 F.3d 564, 565 (7th Cir. 2009).

<sup>14</sup> *Id.*

<sup>15</sup> Car owners also named Chicago Office of Emergency Management and Communication, Chicago Department of Revenue, Chicago Department of Administrative Hearings, Richard M. Daley, and Redflex Traffic System, Inc. as Defendants. Complaint, *Idris v. City of Chicago*, 2006 WL 4516808 (N.D. Ill. 2006).

<sup>16</sup> *Idris*, 552 F.3d at 565-66.

<sup>17</sup> *Id.* at 566-67.

camera critics and concludes that there is a rational basis to support the use of red light camera systems. Finally, this note discusses the implications of the Seventh Circuit's decision to more generalized automated enforcement technology systems.

I: GENERAL CONTEXT: RED LIGHT CAMERA SYSTEMS AND THE RATIONAL-BASIS DOCTRINE

A. *Red Light Camera Systems*

Red light camera systems are a type of automated enforcement technology<sup>18</sup> that take still and/or video photographs of vehicles and drivers running red lights.<sup>19</sup> Although red light cameras did not appear in the United States until the 1990's,<sup>20</sup> as of May 2007, twenty-three states and the District of Columbia have laws allowing for red light camera systems.<sup>21</sup> Within those states, more than three hundred communities have implemented such legislation.<sup>22</sup>

Due to the advanced technology and high cost of red light cameras, local governments contract with private vendors for the assembly, installation, and maintenance of the camera systems.<sup>23</sup> Each

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<sup>18</sup> Automated enforcement technology is the use of "image capture technologies" to monitor and enforce traffic laws. SHAWN TURNER & AMY POLK, OVERVIEW OF AUTOMATED ENFORCEMENT IN TRANSPORTATION (1998), <http://safety.fhwa.dot.gov/intersections/docs/turner.pdf>.

<sup>19</sup> U.S. DEPT. OF TRANSPORTATION, FEDERAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, RED LIGHT CAMERA SYSTEMS, OPERATIONAL GUIDELINES, (2005), [http://safety.fhwa.dot.gov/intersections/rlc\\_guide/rlcguide05jan.pdf](http://safety.fhwa.dot.gov/intersections/rlc_guide/rlcguide05jan.pdf).

<sup>20</sup> RODIER & SHAHEEN, *supra* note 4, at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* Local governments in Arizona, California, Colorado, Delaware, Georgia, Illinois, Maryland, New York, North Carolina, Ohio, Oregon, Tennessee, Texas, Virginia, Washington, and the District of Columbia use red light cameras. New Jersey and Wisconsin prohibit the use of automated enforcement in any situation. *Id.*

<sup>23</sup> CALIFORNIA STATE AUDITOR, BUREAU OF STATE AUDITS, RED LIGHT CAMERA PROGRAMS: ALTHOUGH THEY HAVE CONTRIBUTED TO A REDUCTION IN ACCIDENTS, OPERATIONAL WEAKNESSES EXIST AT THE LOCAL LEVEL (2002), <http://www.bsa.ca.gov/pdfs/reports/2001-125.pdf>.

system consists of three separate mechanisms: a camera, triggers, and a computer.<sup>24</sup> At a typical red light camera intersection, cameras are positioned on poles a few yards above the ground at each corner of the intersection.<sup>25</sup> The triggers are placed below the asphalt at the stop line and in the middle of the intersection.<sup>26</sup> Induction loop technology in the triggers creates a magnetic field that indicates when the vehicle has entered the intersection and passed a certain point in the road.<sup>27</sup> A computer—wired to the triggers and the cameras—monitors the traffic signal.<sup>28</sup> When the traffic signal is green or yellow, the computer ignores the vehicles passing over the triggers. Once the light turns red, however, photographs are taken of vehicles passing over the triggers.<sup>29</sup>

Depending on the particular ordinance, multiple still and/or video photographs are taken.<sup>30</sup> Usually, the first photo is taken to show the vehicle immediately before it enters the intersection against a red light, and a second photo is taken just after the vehicle enters the intersection while the light is red.<sup>31</sup> Additionally, most jurisdictions require a photograph of the rear of the vehicle that includes the license plate number.<sup>32</sup> The vendor typically receives and initially reviews the photographs, and if a violation is suspected, the vendor sends the photographs to the designated local government agency. The government agency then determines whether a traffic violation has

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<sup>24</sup> Kevin P. Shannon, Comment, *Speeding Towards Disaster: How Cleveland's Traffic Cameras Violate the Ohio Constitution*, 55 CLEV. ST. L. REV. 607, 611 (2007) (citing Tom Harris, *How Red-Light Cameras Work*, HOW STUFF WORKS, <http://auto.howstuffworks.com/red-light-camera.htm>).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> SAVAGE, *supra* note 2.

<sup>31</sup> RED LIGHT CAMERA SYSTEMS, OPERATIONAL GUIDELINES, *supra* note 19, at 24.

<sup>32</sup> THE NATIONAL CAMPAIGN TO STOP RED LIGHT RUNNING, A GUIDE TO RED LIGHT CAMERA PROGRAMS: STOP ON RED = SAFE ON GREEN (2002), <http://www.stopredlightrunning.com/pdfs/StopOnRedSafeOnGreen.pdf>.

occurred.<sup>33</sup> If a violation has occurred, the photographs are *prima facie* evidence<sup>34</sup> of a traffic violation and the vehicle owner or driver, depending on the ordinance, is fined for running a red light.<sup>35</sup>

### B. Rational-Basis Doctrine

The United States Constitution establishes the fundamental laws of our nation and defines the rights and liberties of the American people. While federal, state and local governments have the power to pass legislation and regulate behavior, the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty or property without due process of the law, or be denied equal protection of the law.<sup>36</sup> To determine whether a legislative act violates a constitutionally protected right, courts apply one of three standards of review: strict scrutiny, intermediate scrutiny, or rational-basis.<sup>37</sup>

Strict scrutiny is the most stringent of the tests and is applied in two general contexts: (1) when governmental action burdens a fundamental constitutional right;<sup>38</sup> or (2) when governmental action involves the use of a suspect classification.<sup>39</sup> To pass strict scrutiny review, the law must be justified by a compelling governmental

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<sup>33</sup> Kathryn Grondin, *Red-Light Cameras: Safety Tool or Moneymaker?*, DAILY HERALD, March 2, 2008, available at <http://www.dailyherald.com/story/?id=145555>.

<sup>34</sup> CHICAGO, ILL., MUN. CODE §9-102-020(a) (2003).

<sup>35</sup> *Idris v. City of Chicago*, No. 06-C-6085, 2008 WL 182248, at \*1 (N.D. Ill. Jan. 16, 2008).

<sup>36</sup> U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

<sup>37</sup> *U.S. v. Virginia*, 518 U.S. 515, 567 (1996) (Scalia, J., dissenting).

<sup>38</sup> Fundamental rights are only those rights which are “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 701, 721 (1997). For examples of fundamental rights see *Loving v. Virginia*, 388 U.S. 1 (1967) (right to marry); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) (right to have children); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (right to direct the education and upbringing of one’s children); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right to marital privacy).

<sup>39</sup> *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (holding that classifications based on race, national origin, religion, or alienage are suspect classifications).

interest, it must be narrowly tailored to achieve that interest, and it must be the least restrictive means for achieving that interest.<sup>40</sup>

Occasionally, the court recognizes that even though a classification does not warrant strict scrutiny because the classification is not considered suspect—such as gender-based classifications—it still deserves heightened review.<sup>41</sup> In this instance, the court applies the intermediate scrutiny test.<sup>42</sup> Under this test, the government must show that the challenged law involves an important government interest and the classification is substantially related to serving that interest.<sup>43</sup>

Finally, rational-basis review is the least rigorous test applied by courts when determining whether a government has impermissibly infringed upon the rights and liberties of a litigant.<sup>44</sup> The rational-basis test only requires that governmental action be “rationally related to a legitimate government interest.”<sup>45</sup>

All legislation must, at the very least, pass the rational-basis test,<sup>46</sup> which was first articulated by the Supreme Court in 1897.<sup>47</sup> In *Gulf*, the Court stated that the Constitution does not “withhold from states the power of classification,” but it must appear that the classification is “based upon some reasonable ground. . . which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.”<sup>48</sup> Thus, when litigants allege that a law violates equal protection or due process, but the law neither implicates

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<sup>40</sup> *Id.*

<sup>41</sup> *Craig v. Boren*, 429 U.S. 190, 197 (1976).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Wygant v. Jackson Bd. of Edu.*, 476 U.S. 267, 301 (1968) (Marshall, J., dissenting).

<sup>45</sup> *Doe v. City of Lafayette*, 377 F.3d 757, 773 (7th Cir. 2004) (quoting *Lee v. City of Chicago*, 330 F.3d 456, 467 (7th Cir. 2003)).

<sup>46</sup> *Idris v. City of Chicago*, 552 F.3d 564, 566 (7th Cir. 2009).

<sup>47</sup> *Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150, 165-66 (1897).

<sup>48</sup> *Id.*

fundamental rights nor involves suspect classifications, courts apply the rational-basis test.<sup>49</sup>

The due process clause guarantees that no person shall be denied life, liberty, or property without fair process and procedure.<sup>50</sup> Within the due process clause, courts have recognized two distinct components: procedural due process and substantive due process. The right to procedural due process requires that a government entity “provide a citizen adequate notice. . . as well as ample opportunity to be heard at a meaningful time and in a meaningful manner appropriate to the nature of the case.”<sup>51</sup> When analyzing procedural due process claims, courts apply a cost-benefit analysis to determine what process and procedures are due.<sup>52</sup>

Substantive due process, on the other hand, prohibits laws that unreasonably interfere with protected life, liberty, and property rights.<sup>53</sup> This doctrine is a safeguard that ensures that government action does not impermissibly burden the exercise of these rights.<sup>54</sup> As such, substantive due process protects against “certain government actions regardless of the fairness of the procedures used to implement them.”<sup>55</sup> Under substantive due process review, courts apply the strict

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<sup>49</sup> *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313-314 (1993).

<sup>50</sup> U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

<sup>51</sup> *Chicago Cable Commc’ns v. Chicago Cable Comm’n*, 879 F.2d 1540, 1545 (7th Cir. 1989).

<sup>52</sup> Stating a claim under procedural due process generally involves the consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (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 v. Eldridge*, 424 U.S. 319, 335 (1976).

<sup>53</sup> Lisa S. Morris, *Photo Radar: Friend or Foe?*, 61 UMKC L. REV. 805, 813 (1993).

<sup>54</sup> *Id.*

<sup>55</sup> *Daniels v. Williams*, 474 U.S. 327, 331 (1986).

scrutiny test when a fundamental right is at stake<sup>56</sup> and the rational-basis test when fundamental rights are not at issue.<sup>57</sup>

Rational-basis review is also a key component to analysis under the equal protection clause. Under this clause, no citizen shall be deprived of equal protection of the law.<sup>58</sup> Courts interpret equal protection to mean that all persons similarly situated should be treated alike.<sup>59</sup> Traditionally, analysis under the equal protection clause is triggered when a law is based solely on a specific classification, such as race or religion, or when a law grants a particular class of citizens the right to engage in an activity but denies other citizens that same right.<sup>60</sup> However, laws that do not implicate a fundamental right or suspect classification do not violate the equal protection clause if there is a rational relationship between the disparity of treatment and the governmental purpose served.<sup>61</sup> Hence, the rational-basis doctrine only requires that a classification be rationally related to a legitimate governmental purpose.<sup>62</sup> Thus, a classification scheme may be invalidated if it is arbitrary or bears no rational relationship to a legitimate governmental purpose.<sup>63</sup>

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<sup>56</sup> *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997).

<sup>57</sup> *Lawrence v. Texas*, 539 U.S. 558, 579 (2003).

<sup>58</sup> U.S. CONST. amend. XIV, § 1.

<sup>59</sup> *Lawrence*, 539 U.S. at 579 (O'Connor, J., concurring) (quoting *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

<sup>60</sup> *City of Cleburne*, 473 U.S. at 439-441.

<sup>61</sup> *Heller v. Doe*, 509 U.S. 312, 320 (1993) (citing *Nordlinger v. Hahn*, 505 U.S. 1, 15-17 (1976) (per curium)).

<sup>62</sup> *Clements v. Fashing*, 457 U.S. 957, 963-65 (1982). Only when fundamental rights are infringed upon, must legislative actions or classifications be narrowly tailored to a compelling governmental interest. The Supreme Court has determined that fundamental rights are only those which are “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 701, 721 (1997). If other less important rights, rights which are not deeply rooted in our nation’s history and tradition, are infringed upon, rational-basis review is sufficient. When governmental action or legislative classifications infringe on these less important or non-fundamental rights, such action or classification only needs to be rationally related to a legitimate governmental purpose. *Id.*

<sup>63</sup> *Frontiero v. Richardson*, 411 U.S. 677, 683 (1973).

Under both substantive due process and equal protection, the court makes a factual determination on a case-by-case basis to determine whether governmental action or a classification is rationally related to a legitimate governmental interest. When applying the rational-basis test, courts cannot interfere too much with, or second-guess, the work of the legislature.<sup>64</sup> As such, the court “may not sit as a superlegislature” to determine the “wisdom or desirability” of legislative policy decisions.<sup>65</sup> A method is not deemed unconstitutional simply because there are other means to accomplish the underlying purpose of the legislation.<sup>66</sup> Further, courts assume that the objectives articulated by the legislature are the actual purposes of the statute, unless a litigant proves otherwise.<sup>67</sup> To prove otherwise, a challenging litigant must convince the court that the facts on which the classification or action was based could not reasonably be conceived as true<sup>68</sup> and must negate “every conceivable basis which might support it.”<sup>69</sup> Noting this uphill battle, the Supreme Court reminds litigants that “for protection against abuses by legislatures the people must resort to the polls, not to the courts.”<sup>70</sup> Thus, under rational-basis review, courts are traditionally very reluctant to overturn government action.<sup>71</sup>

When litigants bring claims under equal protection or substantive due process with regard to automated enforcement technology legislation, the court must determine which standard of review to apply. With regard to red light camera laws, such laws do not classify based on race, national origin, religion, or alienage. Further,

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<sup>64</sup> *Heller*, 509 U.S. at 319-20.

<sup>65</sup> *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

<sup>66</sup> *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 813 (1976).

<sup>67</sup> *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 (1981) (quoting *Weinberger v. Wisenfeld*, 420 U.S. 636, 648 n. 16 (1975)).

<sup>68</sup> *Vance v. Bradley*, 440 U.S. 93, 113 (1979).

<sup>69</sup> *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

<sup>70</sup> *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 488 (1955) (citing *Munn v. State of Illinois*, 94 U.S. 113, 134 (1876)).

<sup>71</sup> *Gregory v. Ashcroft*, 501 U.S. 451, 470 (1991) (citing *Vance*, 440 U.S. at 97).

fundamental rights are not infringed upon because, as the Seventh Circuit noted, no one has a fundamental right to run a red light or to avoid being seen by a camera on a public street.<sup>72</sup> Therefore, the rational-basis test is applied by courts when considering the constitutionality of red light camera legislation.

## II: *IDRIS V. CITY OF CHICAGO*

### A. *Factual Background*

In July of 2003, the City of Chicago enacted Chapter 9-102-020 of the Chicago Traffic Code (“Chapter 9-102”), establishing a red light camera ordinance providing that:

(a) The registered owner of record of a vehicle is liable for a violation of this section and the fine set forth in Section 9-100-020 when the vehicle is used in violation of Section 9-8-020(c) or Section 9-16-030(c) and that violation is recorded by a traffic control signal monitoring device as determined by a technician who inspects the recorded image created by the device. A photographic recording of a violation obtained by a traffic control signal monitoring device and that has been inspected by a technician shall be *prima facie* evidence of a violation of this chapter.<sup>73</sup>

Chapter 9-102 allows the City to install cameras at traffic intersections throughout Chicago.<sup>74</sup> These cameras are programmed to automatically take still and video photographs of cars that enter intersections during red lights or make illegal turns against red lights.<sup>75</sup> The photographs obtained are inspected by a technician and are *prima facie* evidence of a violation.<sup>76</sup> Generally, the registered car

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<sup>72</sup> *Idris v. City of Chicago*, 552 F.3d 564, 566 (7th Cir. 2009).

<sup>73</sup> CHICAGO, ILL., MUN. CODE §9-102-030 (2003).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

owner is then liable for a ninety dollar fine.<sup>77</sup> These owners may challenge the fine by mail or through an administrative hearing, but may only raise a limited number of defenses.<sup>78</sup> The enumerated defenses do not allow an owner to deny liability by claiming that she was not driving the car at the time the violation occurred.<sup>79</sup> In fact, the ordinance provides that the owner of the vehicle is liable for the fine regardless of who was actually driving.<sup>80</sup> Therefore, “if a car owner lends her car to a friend, the friend runs a red light, and the incident is caught on camera, the owner rather than the friend will be liable for the ninety dollar fine.”<sup>81</sup> Chapter 9-102 does provide a defense if the car owner is a motor vehicle dealership or a manufacturer and has leased the vehicle pursuant to a formal, written lease agreement.<sup>82</sup> Under that circumstance, the lessee is responsible for the fine.<sup>83</sup>

In October of 2003, the City contracted with Redflex for the purchase, installation, monitoring, and maintenance of the City’s red light camera system.<sup>84</sup> Under the contract, Redflex is responsible for

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<sup>77</sup> *Idris v. City of Chicago*, No. 06-C-6085, 2008 WL 182248, at \*1-2 (N.D. Ill. Jan. 16, 2008).

<sup>78</sup> CHICAGO, ILL., MUN. CODE §9-102-040 (2003). Owners of vehicle are not liable for red light violation fines if (1) the operator of the vehicle was issued a uniform traffic citation for running the red light or making an illegal turn on red; (2) the vehicle or its state registration plates were reported as being stolen and were not recovered by the owner at the time of the alleged violation; (3) the vehicle was leased to another person and within 60 days of notice, the owner informed the city of the lessee’s name and address and provided the city with a copy of the lease agreement; (4) the vehicle was an authorized emergency vehicle, the vehicle entered into the intersection in order to yield the right-of-way to an emergency vehicle, or the vehicle was lawfully participating in a funeral procession; (5) the facts alleged in the violation notice are inconsistent to or do not support a finding that a red light violation occurred; or (6) that the respondent was not the registered owner or lessee of the cited vehicle at the time of the violation. *Id.*

<sup>79</sup> CHICAGO, ILL., MUN. CODE § 9-102-020 (2003).

<sup>80</sup> *Idris*, 2008 WL 182248 at \*1.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Def.’s Mem. Supp. Mot. Dismiss, 2007 WL 1348773, at \*4 (N.D. Ill. 2007).

reviewing the photographs, making an initial determination of whether a violation occurred, and transmitting the information to the City for further review.<sup>85</sup> The City's Department of Revenue is responsible for making the final determination for the purpose of issuing a notice of violation.<sup>86</sup>

In 2006, Plaintiffs were issued fines under Chapter 9-102, but complained that they were not driving the vehicle at the time of the alleged violation.<sup>87</sup> Plaintiffs subsequently filed suit in the Northern District Court of Illinois against the City<sup>88</sup> claiming that the red light camera ordinance violates both the equal protection and due process clauses of the United States Constitution.<sup>89</sup>

### *B. Plaintiffs' Constitutional Claims*

In their First Amended Complaint, Plaintiffs alleged that the ordinance violates their equal protection rights by treating registered owners of non-leased vehicles differently than registered owners of leased vehicles with a formal, written lease agreement.<sup>90</sup> Further, Plaintiffs claimed that the ordinance violates their equal protection rights by treating persons charged with violating the City ordinance

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Idris v. City of Chicago*, No. 06-C-6085, 2008 WL 182248, at \*1 (N.D. Ill. Jan. 16, 2008).

<sup>88</sup> Plaintiffs also named the Chicago Office of Emergency Management and Communication, Chicago Department of Revenue, Chicago Department of Administrative Hearings, Richard M. Daley, and Reflex Traffic System, Inc. as Defendants. Complaint, 2006 WL 4516808 (N.D. Ill. 2006).

<sup>89</sup> *Id.* at ¶ 554-55, 2006 WL 4516808 (N.D. Ill. 2006). Plaintiffs also claimed that Defendants violated various Chicago ordinances, Illinois statutes, and the Illinois Constitution by enacting the ordinance. In addition, Plaintiffs alleged that the ordinance violates their procedural due process rights. However, this note focuses on the Seventh Circuit's application of the rational-basis test to the red light camera ordinance; therefore, Plaintiffs' procedural due process claims will only be addressed in footnotes.

<sup>90</sup> *Id.* at ¶ 87.

differently than persons charged with violating the Illinois Vehicle Code.<sup>91</sup>

Plaintiffs also alleged that the ordinance violates their substantive due process rights by penalizing the owners of vehicles “without regard for whether the registered owners were driving their vehicles at the time of the alleged commission of the red light violation.”<sup>92</sup> Plaintiffs argued that the ordinance bears no rational relationship to any legitimate government purpose of the City and further alleged that the ordinance is “arbitrary, capricious and unreasonable” because it “makes irrelevant whether the penalized party actually violated a red traffic signal.”<sup>93</sup> Lastly, Plaintiffs alleged that the ordinance violates their due process rights by “establishing a conclusive presumption of liability” unless they can establish that one of the enumerated defenses should apply to their case.<sup>94</sup>

The overarching theme throughout Plaintiffs’ arguments was that the City’s ordinance furthers no legitimate governmental purpose.<sup>95</sup> Specifically, Plaintiffs claimed that the City is using the red light ordinance as a “take-no-prisoners revenue producer,” rather than a mechanism to deter illegal conduct or regulate vehicles for public safety purposes.<sup>96</sup> According to Plaintiffs, if the City’s true purpose is

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<sup>91</sup> *Id.* at ¶ 98. Under Chapter 9-102, a violation of the red light ordinance is considered a quasi-criminal, non-moving offense where the registered owner of a vehicle is fined \$90 upon each conviction, regardless of how many violations the owner has previously committed. For the same conduct, under Illinois law, if a police officer cites a driver for a red light moving violation, the driver would be guilty of a petty offense (fine only) for the first or second conviction and a Class C misdemeanor (fine/points off license/other penalties) for the third and all subsequent convictions occurring within one year of the first conviction. *Id.* at ¶¶ 98-101.

<sup>92</sup> *Id.* at ¶ 77.

<sup>93</sup> *Id.* at ¶ 79, 2006 WL 4516808 (N.D. Ill. 2006).

<sup>94</sup> *Id.* at ¶ 108. Plaintiffs also alleged that the program violates their procedural due process rights because vehicle owners are not afforded meaningful notice or an opportunity to be heard as they are prohibited from raising the defense that they were not driving the vehicle at the time of the alleged violation. *Id.*

<sup>95</sup> Pl.’s Mem. Opp. to Def.’s Mot. to Dismiss, 2007 WL 2273450, at \*2 (N.D. Ill. 2007).

<sup>96</sup> *Id.*

to deter illegal conduct, enforce traffic laws, and promote public safety, then the City would implement different mechanisms to achieve its goals.<sup>97</sup> Therefore, Plaintiffs argued, the ordinance should be considered invalid as it does not meet the requirements of the rational-basis test.

### C. *The District Court Opinion*

In his opinion for the Northern District of Illinois, Judge Gettleman entertained two motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), one filed by the City of Chicago and one filed by Redflex.<sup>98</sup> Defendants argued that Plaintiffs failed to state a claim upon which relief could be granted; Judge Gettleman agreed and dismissed all federal counts, specifically alleging violations of the equal protection and due process clauses.<sup>99</sup>

Under his equal protection analysis, Judge Gettleman stated that ordinance is subject to rational-basis review because Chapter 9-102 does not create a suspect classification, such as race, alienage, or national origin.<sup>100</sup> Applying the rational-basis test, the court first considered whether the ordinance has a legitimate governmental purpose. As required by the test, Judge Gettleman gave deference to the legislature and accepted the City's stated purpose of the red light camera ordinance: public safety, deterrence, and enforcement of traffic laws.<sup>101</sup>

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<sup>97</sup> *Id.* Plaintiffs argue that if the City was attempting to deter drivers from running red lights, it would "(i) target and prosecute the drivers who committed the unlawful conduct; (ii) make its police presence open and obvious at the various intersections, such as posting visible signs alerting others to the fact that the intersection is monitored by cameras; and/or (iii) alert other drivers at the intersection through sounds, lights or other mechanisms to the fact that a driver has just been identified as having gone through a red light." *Id.*

<sup>98</sup> *Idris v. City of Chicago*, No. 06-C-6085, 2008 WL 182248, at \*1 (N.D. Ill. Jan. 16, 2008).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at \*4.

<sup>101</sup> *Id.*

Judge Gettleman then considered whether the classification treating car owners differently from car dealerships is rationally related to the purpose of the ordinance.<sup>102</sup> The classification was determined to be rationally related to the governmental purpose because “lessors of cars have, in effect, turned over regular, active possession and use, and lack day-to-day control over who drives the vehicle,’ whereas a car owner who ‘simply lends his vehicle to another individual...retains responsibility for the vehicle.’”<sup>103</sup>

Judge Gettleman also considered whether, under equal protection jurisprudence, it is unlawful for the City and State to have different liability and punishment schemes for the same conduct.<sup>104</sup> He noted that Plaintiffs do not claim the ordinance itself treats similarly situated people differently; rather, Plaintiffs argue that it is unlawful for Illinois law and the ordinance to treat the same conduct—running a red light—differently.<sup>105</sup> However, Plaintiffs’ argument was rejected because without challenging a classification made by ordinance itself, “such a claim is not cognizable under the equal protection clause.”<sup>106</sup>

Finally, the court considered Plaintiffs’ substantive due process claims by initially noting that if a fundamental right is not implicated, the court must apply the rational-basis test.<sup>107</sup> He determined that based on precedent, a ninety dollar fine was not sufficient to establish a fundamental right, and, thus, rational-basis review was sufficient.<sup>108</sup> After analyzing multiple cases,<sup>109</sup> Judge Gettleman held that the

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<sup>102</sup> *Id.*

<sup>103</sup> *Idris v. City of Chicago*, No. 06-C-6085, 2008 WL 182248, at \*4 (N.D. Ill. Jan. 16, 2008) (quoting Def.’s Mem. Supp. Mot. Dismiss, 2007 WL 1348773, at \*7 (N.D. Ill. 2007)).

<sup>104</sup> *Id.* at \*5.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* (citing *Doe v. City of Lafayette*, 377 F.3d 757, 773 (7th Cir. 2004)).

<sup>108</sup> *Idris v. City of Chicago*, No. 06-C-6085, 2008 WL 182248, at \*6 (N.D. Ill. Jan. 16, 2008).

<sup>109</sup> For example, Judge Gettleman considered the Supreme Court’s decision in *Bennis v. Michigan*, where the Court rejected a due process challenge to a statute that allowed forfeiture of a car used in an illegal manner even when the owner of the

ordinance's imposition of liability on owners, rather than drivers, of cars that violated red light signals is rationally related to advancing its interest of deterrence, public safety, and enforcement of traffic laws because owners have sole authority and responsibility over the use of their vehicles.<sup>110</sup>

#### *D. The Appeal*

Plaintiffs appealed to the Seventh Circuit claiming that the district court erred in finding that Plaintiffs failed to state a claim under equal protection and due process.<sup>111</sup> Plaintiffs' arguments on appeal were: (1) the City's ordinance violates substantive due process because the ordinance is "arbitrary, capricious or unreasonable" in that it penalizes vehicle owners for alleged moving violations committed not necessarily by the vehicle owners but by independent drivers, and the ordinance does not promote the safety or general welfare of the public; and (2) the City's ordinance violates equal protection because the ordinance lacks a legitimate governmental purpose and its classification is not rationally related to any legitimate governmental purpose.<sup>112</sup>

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car was not implicated in the illegal activity. 516 U.S. 442, 446 (1996). The Court held that the statute was constitutional in part because "a long and unbroken line of cases holds that an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use." *Id.* at 446.

<sup>110</sup> *Id.* Judge Gettleman also dismissed Plaintiffs' claim that Chapter 9-102 violates procedural due process. The court cited to the Seventh Circuit's decision in *Van Harken v. City of Chicago*, where an administrative scheme for adjudicating parking violations was upheld under due process because very little was at stake (maximum fine of one hundred dollars), and the "benefits of the truncated procedure outweighed its costs." *Id.* at \*8 (citing *Van Harken v. City of Chicago*, 103 F.3d 1346, 1356 (7th Cir. 1997)).

<sup>111</sup> Plaintiffs claimed that the ordinance also violates procedural due process because no procedural safeguards exist and the cost and benefits of the procedural safeguards outweigh the liability scheme. Pl.'s App. Brief, 2008 WL 1767206, at \*2 (7th Cir. 2008).

<sup>112</sup> *Id.* at \*2 (7th Cir. 2008).

*E. The Seventh Circuit Opinion*

Chief Judge Easterbrook wrote a concise five-page opinion for the Seventh Circuit Court of Appeals affirming the district court's ruling. The Seventh Circuit held that the City's ordinance did not violate due process and was rationally related to the City's goals.<sup>113</sup>

The court began by addressing Plaintiffs' substantive due process claim by emphasizing that no one has a fundamental right to run a red light or to avoid being seen by a camera on a public street.<sup>114</sup> Although Plaintiffs' interest at stake is a ninety dollar traffic violation fine, Judge Easterbrook noted that the Supreme Court has never held that a property interest "so modest" is a fundamental right.<sup>115</sup>

The court explained that in *Washington v. Glucksberg*, the Supreme Court clearly established that only state action that impinges on fundamental rights is subject to heightened review under substantive due process.<sup>116</sup> Finding that no fundamental right was at stake, Judge Easterbrook applied the rational-basis test by asking, "is it rational to fine the owner rather than the driver?"<sup>117</sup> He succinctly answered his question: "[c]ertainly so."<sup>118</sup>

According to the court, the benefits of the ordinance can be achieved "only if the owner is held responsible" because photographs can reliably confirm which cars go through red lights, but not necessarily who was driving.<sup>119</sup> The court also noted that it is rational to fine the owner because photographic enforcement reduces the cost of law enforcement and if the ordinance requires drivers to be fined, enforcement would be very difficult because drivers could blame

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<sup>113</sup> *Idris v. City of Chicago*, 552 F.3d 564, 566-68 (7th Cir. 2009).

<sup>114</sup> *Id.* at 566.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

others.<sup>120</sup> Judge Easterbrook offered practical advice to car owners not driving at the time of the alleged violation: insist that the driver reimburse you for the ninety-dollar fine.<sup>121</sup>

The court rejected Plaintiffs' argument that Chapter 9-102 violates substantive due process because the ordinance penalizes innocent owners without regard to fault.<sup>122</sup> The court stated that "legal systems often achieve deterrence by imposing fines or penalties without fault."<sup>123</sup> For example, the Supreme Court has held that a system subjecting any car used in a crime to forfeiture, even though the owner may not have had anything to do with the offense, is constitutional because the system increases owners' vigilance.<sup>124</sup> Also, a system that allows for eviction of tenants from public housing because of a guest's misbehavior was found to be constitutional by the Supreme Court because the threat of eviction induces owners to exercise control over their guests.<sup>125</sup> In another example, the Supreme Court held that it was proper to impose penalties on a taxpayer whose income tax return is false, even if the taxpayer's accountant or attorney is responsible for the error, because the threat of penalty will cause the taxpayer to choose her adviser more carefully.<sup>126</sup> The court stated that fining a car's owner is rational for the same reasons: "owners will take more care when lending their cars, and often they can pass the expense on to the real wrongdoer."<sup>127</sup>

Plaintiffs insisted that the presumption of liability on the owner under the City's ordinance is irrational because Illinois law fines drivers, not owners, for moving violations.<sup>128</sup> However, Judge

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Pl.'s App. Brief, 2008 WL 1767206, at \*7 (7th Cir. 2008).

<sup>123</sup> *Idris*, 552 F.3d at 566.

<sup>124</sup> *Id.* (citing *Bennis v. Michigan*, 516 U.S. 442 (1996)).

<sup>125</sup> *Id.* (citing *Department of Housing & Urban Development v. Rucker*, 535 U.S. 125 (2002)).

<sup>126</sup> *Id.* (citing *United States v. Boyle*, 469 U.S. 241 (1985)).

<sup>127</sup> *Id.* at 567 (7th Cir. 2009).

<sup>128</sup> Pl.'s App. Brief, 2008 WL 1767206, at \*7 (7th Cir. 2008).

Easterbrook pointed out that just because a state does things one way does not mean that it is irrational for a city to do things another way.<sup>129</sup> Both systems can be rational.<sup>130</sup> The court reminded Plaintiffs that a federal court “assumes that the action is authorized as a matter of local law and asks only whether federal law forbids what the city or state has done.”<sup>131</sup> Judge Easterbrook suggested that a challenge to procedures used in the City’s ordinance would be better heard in state court.<sup>132</sup>

The court briefly addressed Plaintiffs’ assertion that the ordinance is purely a ploy to generate revenue by stating, “[t]hat the City’s system raises revenue does not condemn it.”<sup>133</sup> According to the court, a system that raises money while improving compliance with traffic laws cannot be called “unconstitutionally whimsical.”<sup>134</sup> Further, the court stated that taxes, “whether on liquor or running red lights,” are valid municipal endeavors and a fine not only raises revenue, but also discourages the taxed activity.<sup>135</sup>

Plaintiffs also alleged that the district court erred when it found that the City’s red light camera ordinance did not violate the equal protection clause.<sup>136</sup> Plaintiffs claimed that the district court failed to consider whether the red light ordinance has a legitimate governmental purpose.<sup>137</sup> According to Plaintiffs, the ordinance is invalid because no

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<sup>129</sup> *Idris*, 552 F.3d at 567.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 556. (discussing *Minnesota v. Kuhlman*, 729 N.W.2d 577 (2007) (holding a Minneapolis ordinance similar to Chicago’s invalid due to preemption because the state law and city ordinance differ in their approaches to enforcement). The Seventh Circuit declined to address whether Illinois law preempts the city ordinance because, “[w]hether a state law permits the action in the first place is a question for state courts.” *Id.*

<sup>133</sup> *Idris*, 552 F.3d at 566.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Pl.’s App. Brief, 2008 WL 1767206, at \*12 (7th Cir. 2008).

<sup>137</sup> *Id.*

legitimate purpose exists.<sup>138</sup> The Seventh Circuit chose not to address Plaintiffs' argument, and instead found the distinction between lessors and other owners to be reasonable because the lessee is treated in most ways as the car owner.<sup>139</sup> Judge Easterbrook acknowledged circumstances in which an owner of a car will not always have control over the car and driver, such as parent living in California lending a car to a child who lives in Chicago.<sup>140</sup> However, the court concluded that "review under the rational-basis doctrine tolerates an imprecise match of statutory goals and means."<sup>141</sup> For the foregoing reasons, the court affirmed the district court's dismissal of Plaintiffs' federal claims.<sup>142</sup>

### III. ANALYSIS

#### A. *The Seventh Circuit Failed to Sufficiently Apply the Rational-Basis Test to the Red Light Camera Ordinance*

In its opinion, the Seventh Circuit correctly held that the red light camera ordinance passes the rational-basis test; however, its application of the test was insufficient. As previously discussed, under the ordinance, vehicle owners are liable for running red lights regardless of who was actually driving.<sup>143</sup> According to Plaintiffs, this provision violates substantive due process because it is not rationally related to a legitimate governmental purpose.<sup>144</sup>

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<sup>138</sup> *Id.*

<sup>139</sup> *Idris v. City of Chicago*, 552 F.3d 564, 567 (7th Cir. 2009).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Judge Easterbrook also dismissed Plaintiffs' argument that Chapter 9-102 violated procedural due process by stating (1) all the defenses available under state law for running a red light are available at a hearing, (2) photographs are at least as reliable as live testimony, and (3) due process allows administrative decisions to be made on photographic records without regard to the hearsay rule. *Id.* at 568.

<sup>143</sup> CHICAGO, ILL., MUN. CODE §9-102-030 (2003).

<sup>144</sup> Pl.'s Compl., ¶ 77-78, 2006 WL 4516808 (N.D. Ill. 2006).

In its application of the rational-basis test, the court first failed to clearly state whether the ordinance was enacted in furtherance of a governmental interest. The court could have easily cited the City's stated purpose for enacting the red light camera ordinance: enforcing traffic laws.<sup>145</sup> Also, the court should have quoted the preamble of the ordinance which identifies another legitimate governmental interest: "preservation of public safety by reducing the number of accidents resulting from vehicles running red lights."<sup>146</sup> By failing to do so, the court missed an opportunity to set clear precedent and inform future litigants that challenging the red light camera ordinance, and other similar laws, on the basis that no legitimate governmental interest exists, will fail.

Second, the court failed to sufficiently explain why fining vehicle owners is rationally related to the purposes of the ordinance. According to Judge Easterbrook, it is rational to fine owners, because a camera can reliably show which cars go through red lights, enforcement would be too difficult if drivers had to be fined, and cameras reduce the cost of law enforcement.<sup>147</sup> While these points are valid, the court did not explain how or why they are rationally related to the governmental interests of public safety, deterrence or enforcement of traffic laws.

To address these concerns, the court should have explained that under rational-basis review, choices made by the City are given a strong presumption of validity, rebuttable only when there is no conceivable set of facts to support a rational relationship between the challenged provision and the City's legitimate goals.<sup>148</sup> Further, it is for the legislature, not the court, to balance the advantages and disadvantages of a certain provision.<sup>149</sup>

Here, fining the driver would be rationally related to the purposes of the ordinance. The driver is the person who ran the red light, and,

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<sup>145</sup> Def.'s App., 2008 WL 2740753, at \*22 (7th Cir. 2008).

<sup>146</sup> *Id.* (citing Council Journal, Jul. 9, 2003).

<sup>147</sup> *Idris v. City of Chicago*, 552 F.3d 564, 567 (7th Cir. 2009).

<sup>148</sup> *Heller v. Doe*, 509 U.S. 312, 320-21 (1993).

<sup>149</sup> *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487 (1955).

therefore, the person who broke the law and endangered the public. Under the same reasoning, if the registered owner was driving the car at the time of violation, fining the owner is rationally related to the purposes of the ordinance. Therefore, the only issue arises when car owners are fined even though they were not driving at the time of violation. However, the ordinance will not fail under rational-basis review because of this inequality.

To start, it is rational for the City to assume that registered owners commonly drive their own cars.<sup>150</sup> Following that premise, it is also rational for the City to assume that when vehicles are cited for running red lights, vehicle owners are commonly in the driver's seat. Therefore, fining vehicle owners is rationally related to the purposes of the ordinance because, more likely than not, the vehicle owner is the person who actually ran the red light and endangered the public.

Moreover, the City's chosen method for addressing the problems it faces need not be made with "mathematical nicety."<sup>151</sup> As such, the City ordinance will not be invalidated solely because "in practice it results in some inequality."<sup>152</sup> Red light camera systems arguably increase the number of traffic offenses detected which in turn promotes public safety by deterring dangerous driving.<sup>153</sup> In order to achieve these results, it is a necessary evil to fine owners rather than drivers because drivers cannot be reliably identified by the cameras.<sup>154</sup> The court should have made clear that while this provision may result in some inequality, the City determined that in order to accomplish the purposes of the ordinance, fining owners is a necessary evil which is allowable under rational-basis review.<sup>155</sup>

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<sup>150</sup> State v. Dahl, 87 P.3d 650, 655 (Or. 2004).

<sup>151</sup> F.C.C. v. Breach Commc'ns., Inc., 508 U.S. 307, 316 no.7 (1993) (quoting Dandridge v. Williams, 397 U.S. 471, 485 (1970)).

<sup>152</sup> *Id.*

<sup>153</sup> SAVAGE, *supra* note 2.

<sup>154</sup> Idris v. City of Chicago, 552 F.3d 564, 566 (7th Cir. 2009).

<sup>155</sup> See Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 485-489 (1955).

The court also addressed Plaintiffs' argument that the ordinance violates equal protection because it treats lessors and other vehicle owners differently.<sup>156</sup> Judge Easterbrook correctly chose to apply the rational-basis test but again failed to sufficiently apply the test. By not addressing Plaintiffs' argument that no legitimate government purpose exists, the court left the door open for future litigants to bring such claims. Instead, the court should have clearly stated that public safety, deterrence, and enforcement of traffic laws are the purposes of this ordinance, which generally have been long-accepted as legitimate governmental interests.<sup>157</sup>

According to the court, the classification between lessors and other owners is rational because a lessee is treated for many purposes as the car's owner.<sup>158</sup> Judge Easterbrook notes that owners will not always have control over their vehicle, but rational-basis review permits an imprecise match of statutory goals and means.<sup>159</sup> To bolster its opinion, the court should have found that lessors and owners who lend their vehicles are not similarly situated. Owners claiming to have informal lease agreements are actually lending their vehicles to family, friends or other drivers, not leasing them. Whereas, car dealerships enter into contractual, formal lease agreements which grant individuals "exclusive possession, use, control, and responsibility" over vehicles.<sup>160</sup> For all intents and purposes relating to traffic laws, the lessee is treated as the car's owner. Thus, drawing a distinction between owners and lessors does not deny any equal protection right because the two groups are not similarly situated. In fact, it is far more rational to treat owners and lessees in the same way because both groups have

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<sup>156</sup> *Idris*, 552 F.3d at 567.

<sup>157</sup> Protecting the safety of citizens, deterring illegal conduct, and reducing traffic violations are legitimate government interests. *See Walter v. City of Chicago*, 1992 WL 88457, at \*3 (N.D. Ill. April 27, 1992); *National Paint & Coatings v. Chicago*, 45 F.3d 1124, 1129 (7th Cir. 1995); *Grant v. City of Chicago*, 594 F. Supp. 1441, 1447 (N.D. Ill. 1984); *Smith v. Doe*, 538 U.S. 84, 87 (2003).

<sup>158</sup> *Idris*, 552 F.3d at 567.

<sup>159</sup> *Id.*

<sup>160</sup> 625 ILCS 5/1-137.

possession, use, control, and responsibility for their vehicles, while lessors do not.

*B. Under an Expanded Analytical Framework, Red Light Camera Laws Still Pass the Rational-Basis Test*

In a very brief analysis, the Seventh Circuit determined that the City's red light camera ordinance is rationally related to a legitimate governmental purpose. The court was not required to consider other evidence presented by red light camera critics regarding the purpose of these laws because "legislative choice is not subject to courtroom fact-finding" under rational-basis review.<sup>161</sup> However, even when considering evidence that attempts to negate a legitimate governmental purpose, red light camera laws still pass the rational-basis test.

1. Critics Argue Red Light Camera Laws are Revenue Generating Machines

Red light camera opponents argue that such programs lack a legitimate purpose and, instead, are simply revenue generating mechanisms.<sup>162</sup> Lon Anderson, spokesperson for AAA Mid-Atlantic, said that the motor club believes red light camera programs are targeted at generating revenue, rather than reducing crashes.<sup>163</sup> To

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<sup>161</sup> *F.C.C. v. Breach Commc'ns., Inc.*, 508 U.S. 307, 307 (1993).

<sup>162</sup> Aaron Chambers, *Lawmakers Stop Red-Light Camera Bill Passage*, ROCKFORD REGISTER STAR, May 27, 2008, <http://www.rrstar.com/archive/x1353501007/Lawmakes-stop-red-light-camera-bill-passage>.

<sup>163</sup> Del Quentin Wilber and Derek Willis, *D.C. Red-Light Cameras Fail to Reduce Accidents*, WASH. POST, Oct. 4, 2005, A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/03/AR2005100301844.html>.

support this theory, Anderson drew attention to the amount of money cities have netted from these programs.<sup>164</sup>

For example, the District of Columbia collected more than fifty-two million dollars in revenue since enacting a red light camera program in 1999.<sup>165</sup> In Charlotte, North Carolina, the city collected over two million dollars from August of 1999 through July of 2000 in red light camera fines.<sup>166</sup> In just three months, cameras at one intersection in suburban Schaumburg, Illinois raked in one million dollars in fines; but the cameras have since been deactivated amidst a flurry of complaints.<sup>167</sup> The existing one hundred thirty-six cameras in Chicago have generated one hundred million dollars.<sup>168</sup> Recently, Chicago Mayor Richard Daley made clear that the red light camera ordinance is designed to increase the number of citations issued and close the gap in the 2009 budget.<sup>169</sup> With millions of dollars at stake, critics of the red light cameras claim that this evidence clearly demonstrates that the main purpose of red light camera laws is to raise

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<sup>164</sup> Kelley Beaucar Vlahos, *Critics Say Red Light Photo Enforcement a Shakedown*, FOX NEWS, Sept. 15, 2003, <http://www.foxnews.com/story/0,2933,97286,00.html>.

<sup>165</sup> *Id.*

<sup>166</sup> Andrew W.J. Tarr, *Picture It: Red Light Cameras Abide by the Law of the Land*, 80 N.C. L. Rev. 1879, 1887 (2002).

<sup>167</sup> Carolyn Starks, *Schaumburg Turns off Red-Light Camera near Woodfield*, CHI. TRIB., Feb. 26, 2009, <http://www.chicagotribune.com/news/local/chi-red-lights-26-feb26,0,4193191.story>. After collecting one million dollars in fines, the village of Schaumburg deactivated the red light camera near Woodfield Mall amidst a “flurry of complaints –some from scofflaws threatening never to shop again at the mall....” *Id.* Village officials reported that the camera “wasn’t improving safety that much anyway.” *Id.*

<sup>168</sup> *Federal Court Upholds Use of Red Light Cameras for Profit*, THE NEWSPAPER, Jan. 6, 2009, <http://www.thenewspaper.com/news/26/2648.asp>.

<sup>169</sup> *Id.* Also, in 2007 when reporters asked Chicago’s Council Finance Committee Chairman Ed Burke whether revenue was the reason for cameras, he responded, “[o]f course it is. It’s budgeted in our annual appropriation ordinance. . .the reality is people blow through these intersections and they’re going to be caught and they’re going to be fined. . .it has become a big revenue source, absolutely.” *Chicago Alderman Admits Cameras are for Revenue*, THE NEWSPAPER, June 22, 2007, <http://www.thenewspaper.com/news/18/1820.asp>.

revenue, not promote safety, deter illegal conduct, or enforce traffic laws.

However, Plaintiffs and critics nationwide fail to cite any case law or authority holding that raising revenue is not a legitimate governmental purpose; to the contrary, one of the main purposes of government is to raise revenue and levy taxes.<sup>170</sup> Further, fines are very common punishment for municipal violations and are often used as a method of deterrence.<sup>171</sup> However, in the case at bar, the City does not argue that raising revenue was its legitimate governmental interest when enacting the red light camera ordinance. Rather, the preamble states that the purposes of the ordinance are enforcement of traffic laws and promotion of public safety by deterring dangerous driving.<sup>172</sup>

As the Seventh Circuit explained, just because an ordinance may generate revenue does not negate other legitimate government purposes the ordinance may have.<sup>173</sup> If this were the case, any municipal endeavor that fines citizens for violations could be called into question for lacking a legitimate governmental purpose. Under rational-basis review, courts assume that the purposes articulated by the legislature are the actual purposes of legislation, unless a litigant proves otherwise.<sup>174</sup> Merely citing the amount of revenue collected, albeit an astonishing account, does not prove otherwise or negate that fact that these programs have legitimate governmental purposes. In fact, the amount of money generated by these cameras from red light violations proves the magnitude of the problem facing city officials.

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<sup>170</sup> *Gibbons v. Ogden*, 22 U.S. 1, 75-76 (1824).

<sup>171</sup> *Towers v. City of Chicago*, 173 F.3d 619, 624 (7th Cir. 1999).

<sup>172</sup> Def.'s App., 2008 WL 2740753, at \*22 (7th Cir. 2008) (citing Council Journal, Jul. 9, 2003).

<sup>173</sup> *Idris v. City of Chicago*, 552 F.3d 564, 566 (7th Cir. 2009).

<sup>174</sup> *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 (1981) (quoting *Weinberger v. Wisenfeld*, 420 U.S. 636, 648 n. 16 (1975)).

## 2. Critics Argue Red Light Camera Laws are Causing, Not Preventing, Accidents

According to critics of red light cameras, not only are cities making profits from the cameras, but, perhaps more importantly, the cameras are not promoting public safety. For example, in Chicago, pedestrian deaths are on the rise despite the use of red light cameras.<sup>175</sup> Also, an analysis of crash statistics reported by the Washington Post indicates that the number of accidents has actually increased at intersections with red light cameras in Washington D.C.<sup>176</sup> Traffic consultant and former senior researcher at Northwestern University's Center for Public Safety, Dick Raub, said red light cameras "are not performing any better than intersections without cameras."<sup>177</sup>

Further, researchers at the University of South Florida College of Public Health concluded that rather than improving motorist safety, red light cameras significantly increase accidents.<sup>178</sup> Lead author Barbara Langland-Orban reported that "the rigorous studies clearly show red-light cameras don't work."<sup>179</sup> According to that report, the cameras cause crashes and injuries when drivers attempt to abruptly stop upon approaching a camera intersection.<sup>180</sup> Critics of red light cameras argue that proponents cannot honestly claim that the purpose

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<sup>175</sup> Tracy Swartz, *Pedestrian Deaths in Chicago are up Despite Safety Measures*, CHI. TRIB., Feb 17, 2009, [www.chicagotribune.com/news/local/chi-pedestrian-safety-17-feb17,0,5315575.story](http://www.chicagotribune.com/news/local/chi-pedestrian-safety-17-feb17,0,5315575.story). Specifically, fifty-six pedestrians were killed in 2008, which is up from forty-nine deaths in 2007 and forty-eight deaths in 2006. *Id.*

<sup>176</sup> Wilber & Willis, *supra* note 163. Three outside traffic specialists independently reviewed data and were surprised to discover that cameras do not appear to be making any difference in preventing injuries or collisions. *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Barbara Langland-Orban, *Red-Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if they are Used in Florida?*, FLA. PUB. HEALTH REV. (2008), 5:1-7.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

of these programs is to promote public safety when studies demonstrate that red light cameras actually cause accidents.

However, even if the abovementioned studies are correct, the rational-basis test does not require that the governmental purpose of legislation be fully effectuated.<sup>181</sup> As the Supreme Court made clear, the judiciary's role is not to judge the wisdom of the legislature's policy determinations or consider if the policies chosen are effective.<sup>182</sup> Further, even if the rational-basis test mandated that legislation be successful in accomplishing the governmental purpose, there is evidence that suggests that red light camera systems are reducing traffic accidents. For example, the Insurance Institute for Highway Safety reported that the introduction of cameras at intersections in Virginia lowered red light violations by forty-four percent.<sup>183</sup> Also, in New York City, one year after implementing cameras, accidents due to red light running had decreased by seventy percent.<sup>184</sup> Similarly, in Howard County, Maryland, red light crashes at one particular intersection were reduced by almost fifty percent in one year,<sup>185</sup> and in Oxnard, California, red light violations declined by forty-two percent after the installation of cameras.<sup>186</sup> Likewise, Chicago officials report that since cameras were installed in 2003, red light running has been reduced by fifty-nine percent.<sup>187</sup>

Considering all of the available evidence, the true effect of red light cameras on public safety remains unclear; however, courts only need to determine whether a legitimate governmental purpose could conceivability exist and whether the legislation or classification is

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<sup>181</sup> *Heller v. Doe*, 509 U.S. 312, 318-19 (1993).

<sup>182</sup> *Id.*

<sup>183</sup> James M. Rose, *Red Light Violations in New York City—Use of Cameras*, NYVEH §26:12 (2008).

<sup>184</sup> SAVAGE, *supra* note 2.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Fran Spielman, *Red-Light Cam Firm Gets \$32M Payday*, CHI. SUN-TIMES, Nov. 4, 2008, [http://mobile.suntimes.com/suntimes/db\\_9561/contentdetail.htm;jsessionid=8D2E07F6D7827E0BAB180A64A6A31FEC?contentguid=379D8qtR&full=true](http://mobile.suntimes.com/suntimes/db_9561/contentdetail.htm;jsessionid=8D2E07F6D7827E0BAB180A64A6A31FEC?contentguid=379D8qtR&full=true).

rationally related to that purpose.<sup>188</sup> Therefore, the success rate of red light camera systems need not be considered under rational-basis review.

### 3. Critics Argue Alternatives to Red Light Cameras Should Be Used If Government's True Goal Was Safety

Critics also claim that if revenue was not the main goal, cities would attempt to implement alternative forms of enforcement.<sup>189</sup> For example, all-red clearance intervals at intersections, where for a brief period lights in all directions are red, and increasing the length of yellow lights are popular alternate ways to reduce red light accidents.<sup>190</sup> In fact, former House Majority Leader Dick Armey issued a report alleging that at intersections with cameras, traffic engineers intentionally shortened yellow light time, which in turn increased the number of red light violations and generated more fines.<sup>191</sup> This theory is supported by an investigation in Philadelphia conducted by the Insurance Institute for Highway Safety, finding that red light violations dropped by thirty-six percent after the duration of yellow lights were extended.<sup>192</sup> Also, the Virginia Department of Transportation noted a significant decrease in red light violations at intersections in Fairfax County when the yellow light was lengthened by 1.5 seconds.<sup>193</sup> Similarly, the Texas Transportation Institute reported that an increase of 0.5 to 1.5 seconds in yellow light duration

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<sup>188</sup> *Id.*

<sup>189</sup> Vlahos, *supra* note 164.

<sup>190</sup> Larry Copeland, *Red-Light Cameras Bring Backlash*, USA TODAY, Feb. 14, 2007, available at [http://usatoday.com/news/nation/2007-02-12-redlightside\\_x.htm](http://usatoday.com/news/nation/2007-02-12-redlightside_x.htm).

<sup>191</sup> OFFICE OF THE MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, *THE RED LIGHT RUNNING CRISIS: IS IT INTENTIONAL?* (2001), <http://www.thenewspaper.com/rlc/docs/finalreport.pdf>.

<sup>192</sup> BONNESON & ZIMMERMAN, *supra* note 192.

<sup>193</sup> NICHOLAS J. GARBER, JOHN S. MILLER, R. ELIZABETH ABEL, SAEED ESLAMBOLCHI, & SANTHOSH K. KORUKONDA, *THE IMPACT OF RED LIGHT CAMERAS (PHOTO-RED ENFORCEMENT) ON CRASHES IN VIRGINIA* (Virginia Department of Transportation) (2007).

decreased the frequency of red light running by at least fifty percent.<sup>194</sup>

Other engineering alternatives aimed at reducing accidents caused by running red lights include making traffic lights more visible, improving intersections, retiming traffic signals, placing empty squad cars at intersections,<sup>195</sup> and requiring intersections with right light cameras to also have countdown signal indicators, notifying motorists how much time is left before the light changes.<sup>196</sup> Considering the numerous engineering alternatives, opponents of red light camera legislation claim that if city officials were actually trying to promote public safety rather than generate revenue, they would implement these less intrusive mechanisms.

While these alternatives to red light camera systems may be good suggestions, they are not relevant to the constitutional analysis. The fact that the City “might have furthered its underlying purpose more artfully, more directly, or more completely, does not warrant a conclusion that the method it chose is unconstitutional.”<sup>197</sup> Thus, when applying the rational-basis test, courts may not judge the wisdom, fairness or logic of legislative choices.<sup>198</sup> Therefore, if Chicago determined that red light camera systems would best accomplish the goals of promoting public safety, enforcing traffic laws, and deterring illegal conduct, it is not up to the court to consider alternative or better ways to effectuate those goals.<sup>199</sup>

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<sup>194</sup> James A. Bonneson & Karl H. Zimmerman, *EFFECT OF YELLOW-INTERVAL TIMING ON RED-LIGHT VIOLATION FREQUENCY AT URBAN INTERSECTIONS* (Texas Transportation Institute) (2003).

<sup>195</sup> *10 Reasons to Oppose Red-Light Cameras*, NATIONAL MOTORISTS ASSOCIATION, Nov. 15, 2007, <http://www.motorists.org/blog/10-reasons-to-oppose-red-light-cameras/>.

<sup>196</sup> Fran Spielman, *Ready, Set, Stop: Red-Lights Could Get Countdown*, CHI. SUN-TIMES, FEB. 19, 2009, <http://www.suntimes.com/news/politics/1439382,CST-NWS-redlight19.article>.

<sup>197</sup> *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 813 (1976).

<sup>198</sup> *Heller v. Doe*, 509 U.S. 312, 318-319 (1993).

<sup>199</sup> *Id.*

## CONCLUSION

Automated enforcement technology must necessarily be evaluated under rational-basis review. In *Idris v. City of Chicago*, the Seventh Circuit applied the rational-basis test, finding Chicago's red light camera ordinance constitutional. The court was faced with a very narrow issue, and therefore did not address the constitutionality of automated enforcement technology in general, or the bevy of other concerns raised by skeptics. This litigation, and the court's opinion, is most likely just the tip of the iceberg.

Soon after the court issued its opinion, several state and local governments quickly moved forward with plans to implement other types of automated enforcement technology. For example, the Illinois State legislature is currently considering a bill permitting the use of automated speed cameras.<sup>200</sup> Under the proposed law, speeding tickets issued by automated enforcement technology would be sent to registered vehicle owners and would be treated as non-moving offenses, just like red light camera violations.<sup>201</sup> Also, the city of New Britain, Connecticut approved the purchase of a seventeen thousand dollar infrared-camera system called the "Plate Hunter."<sup>202</sup> The Plate Hunter is mounted to a police car and automatically reads the license plates of every passing vehicle, alerting officers if the owner has failed to pay traffic tickets.<sup>203</sup>

However, not everyone has accepted the Seventh Circuit's recent opinion. For example, a man in Glendale, Arizona was recently arrested for attacking a red light camera with a pick ax.<sup>204</sup> Also, during

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<sup>200</sup> Jon Hilkevitch, *Speed Cameras Proposed in Illinois*, CHI. TRIB., March 26, 2009, <http://www.chicagotribune.com/news/local/chi-speed-cameras-26-mar26,0,4094414.story>.

<sup>201</sup> *Id.*

<sup>202</sup> William M. Bulkeley, *Get the Feeling You're Being Watched? If You're Driving, You Just Might Be*, WALL ST. J., March 27, 2009, at A1, available at [http://online.wsj.com/article/SB123811365190053401.html#mod=rss\\_whats\\_news\\_us](http://online.wsj.com/article/SB123811365190053401.html#mod=rss_whats_news_us).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

the holidays last year, a group of men all dressed as Santa Claus drove throughout Tempe, Arizona and placed gift-wrapped boxes over red light cameras, blocking their view.<sup>205</sup> In addition to destroying or impairing red light camera systems, others are selling sprays and plastic skins for license plates, both promising to reflect a traffic-camera flash making the license plate unreadable.<sup>206</sup> Another group recently developed a free cellular phone application which identifies locations of red light and speed cameras.

While local governments and automated enforcement technology proponents push for more legislation allowing for enforcement technology, clearly, a large sector of society continues to be skeptical. With a flurry of activity on both sides of the issue, practitioners and courts must consider a number of additional concerns regarding this technology, such as “big-brother” privacy concerns,<sup>207</sup> concerns that state law preempts local law regulating the same conduct,<sup>208</sup> and

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<sup>205</sup> *Id.*

<sup>206</sup> *Id.* California passed a law banning the use of the spray and license plate covers. *Id.*

<sup>207</sup> Mary Lehman, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U. Tol. L. Rev. 815. Ms. Lehman’s note concludes that red light camera systems do not invade privacy rights, in part because there is no expectation of privacy on public streets. *See Agomo v. Williams*, 916 A.3d 181, 190 (D.C. 2007) (citing *Agomo v. Williams*, 2003 WL 21949593, at \* 7(D.C. Super. 2003) (finding that privacy concerns are outweighed by the legitimate concerns for safety on public streets)).

<sup>208</sup> The Supreme Court of Minnesota held that the Minneapolis red light camera ordinance was in conflict with the state law prohibiting vehicles from running red lights, and thus, the ordinance was invalid. *State v. Kuhlman*, 729 N.W. 2d 577, 582-84 (Minn., 2007). The Minnesota Highway Traffic Regulation Act expressly preempts local traffic ordinances that are in conflict with state traffic laws; there was no enabling statute in Minnesota authorizing municipalities to initiate automated traffic enforcement programs. *Id.* The court found that a conflict existed because under the state law, only drivers are penalized for running a red light, whereas, the ordinance contains a rebuttal presumption that the owner was driving the vehicle. *Id.* Further, under the state statute, “an element of the crime is that the defendant was the driver,” but under the red light ordinance, “the defendant must establish that he was not the driver and that someone else was.” *Id.*

concerns regarding the contractual relationship between local governments and automated enforcement technology vendors.<sup>209</sup>

These concerns may be valid and should be considered; however, the Seventh Circuit found Chicago's red light camera ordinance to be constitutional and would likely uphold other similar laws. Further, while this decision is not binding on other jurisdictions, district courts will likely follow the Seventh Circuit's lead if, and when, they consider the constitutionality of automated enforcement technology laws similar to Chicago's ordinance.

Therefore, if skeptics are serious about their disdain for automated enforcement technology systems, perhaps they should go to state court or do what the villagers in Schaumburg, Illinois did: complain to local lawmakers, complain to city representatives, complain to state legislators, complain to anyone who will listen, until the cameras are taken down.

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<sup>209</sup> Local governments usually contract with vendors for the assembly, installation, and maintenance of the camera systems. Vendors have different objectives than local governments do; vendors provide services for profit. While there is nothing inherently wrong with this business venture, state courts have expressed concern regarding the amount of oversight local governments have over vendors and the possible conflict of interest created by the compensation scheme. For example, a superior court in California ruled that the city of San Diego did not provide sufficient oversight of its vendor, resulting in more than two hundred and fifty red light citations being dismissed. *In re Red Light Camera Cases* (Super. Ct. San Diego County, 2001, No. 57927SD). *But see In re Red Light Photo Enforcement Cases*, 163 Cal. App. 4th 1314 (Cal. App. 4 Dist., 2008), *review granted*, 193 P.3d 281 (Cal. 2008). The vendor entirely conducted the installation, calibration, and maintenance of the camera equipment. The court found that the city had no involvement with, or supervision over, the ongoing operation of the program. Further, because the vendor was essentially running the entire red light program and was being paid on a contingency basis, the court found a potential conflict of interest on the part of the vendor. *Id.*