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**LIGHTS, CAMERA . . . TICKET: RED LIGHT CAMERAS AFTER
IDRIS V. CITY OF CHICAGO**

*Cooper J. Strickland*¹

Red light camera technology is in use in many jurisdictions throughout the United States. For some, this technology represents a powerful tool for improving road safety. For others, its use represents overreaching by governments searching for ways to generate additional revenue. In Idris v. City of Chicago, the Seventh Circuit Court of Appeals examined the constitutionality of Chicago's red light camera ordinance and held, in part, that the ordinance did not violate the substantive due process or equal protection clauses of the Fourteenth Amendment. Going forward, the Idris decision will likely limit the effectiveness of Fourteenth Amendment challenges pursued by red light camera opponents.

I. INTRODUCTION

The use of red light camera technology is widespread: the Federal Highway Administration identifies twenty-one states that “have considered camera technology for [law] enforcement and have either passed legislation or are considering legislation to enforce red light running with camera technology.”² The City of

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² U.S. Department of Transportation, Federal Highway Administration Safety, RLR Cameras Overview, http://safety.fhwa.dot.gov/intersections/rlrcam_overview.htm (last visited Feb. 14, 2009) (on file with the North Carolina Journal of Law & Technology). Generally, red light camera systems rely on sensors located beneath the intersection pavement to trigger the camera system. See, e.g., City of Chicago Official Homepage, Red-Light Camera Enforcement - Program Overview, <http://egov.cityofchicago.org> (follow “City Departments” hyperlink; then follow “Office of Emergency Management and Communication” hyperlink; then follow “Red-Light Camera Enforcement” hyperlink under “Traffic Management Authority”; then follow “Program Overview” hyperlink) (last visited Feb. 14, 2009) (on file with the North Carolina Journal of Law & Technology). Once the light has turned red, the system is ready to be triggered. *Id.* Photographic and video footage is taken if a vehicle travels over the sensors

Chicago has “one of the largest red light camera programs in the U.S.,”³ incorporating 248 cameras at 123 intersections.⁴ Since the program began in November 2003, fines totaling \$109 million have been collected.⁵ In 2008 alone, 579,560 citations were issued, totaling \$44.8 million in fines.⁶ These statistics reveal the scope of Chicago’s program and its effect on the public’s pocket book.

above a minimum speed. *Id.* The vendor reviews the image and forwards it to the City for final review and processing. *Id.* A citation is then issued to the vehicle’s registered owner. *Id.* See generally Daryl J. Jones, *Patrolling Traffic by Camera*, 45 REV. DER. P.R. 197, 199 (2006) (describing vehicle detector technology).

³ Redflex Traffic Systems, Redlight Enforcement, http://www.redflex.com/html/usa/results_redlight.html (last visited Feb. 14, 2009) (on file with the North Carolina Journal of Law & Technology). While not the only vendor of red light camera technology, Chicago’s vendor, Redflex Traffic Systems, “has contracts with more than 230 U.S. cities, and is the largest provider of digital red light and speed enforcement services in North America.” Press Release, Redflex Holdings Limited, Redflex Expands Across California with Two New Red Light Enforcement Contracts (Mar. 10, 2009), available at http://redflex.com/public_documents/asx_announcements/2009-03-10%20Huntington%20Beach%20and%20San%20Rafael%20CA.pdf (last visited Mar. 15, 2009) (on file with the North Carolina Journal of Law & Technology).

⁴ Fran Spielman, *Appeals Court Ruling Paves Way for More Red-Light Cameras*, CHI. SUN-TIMES, Jan. 5, 2009, <http://www.suntimes.com/news/politics/1362558,chicago-red-light-cameras-court-of-appeals-010509.article> (last visited Jan. 24, 2009) (on file with the North Carolina Journal of Law & Technology).

⁵ Jon Hilkevitch, *When CTA Driver Runs Light, You Pay*, CHI. TRIB., Jan. 26, 2009, § 1, at 1. Currently, a red light camera fine is one hundred dollars. See CHI., ILL., CHI. TRAFFIC CODE §9-100-020(d) (2008). Red light cameras are big business in Chicago with a substantial amount of the program’s revenue going to the vendor; for example, on March 3, 2008, the Chicago Office of Emergency Management and Communications announced a five-year, \$52 million contract with Redflex. Press Release, Office of Emergency Management and Communications, Chicago Awards Red Light Camera Contract (Mar. 3, 2008), available at <http://egov.cityofchicago.org> (follow “City Departments” hyperlink; then follow “Office of Emergency Management and Communications” hyperlink; then follow “2008” hyperlink under “Archived Press Releases”; then follow “Chicago Awards Red Light Camera Contract” hyperlink) (last visited Feb. 14, 2009) (on file with the North Carolina Journal of Law & Technology).

⁶ Hilkevitch, *supra* note 5.

In *Idris v. City of Chicago*,⁷ the Seventh Circuit Court of Appeals held that it was rational for the City of Chicago to fine the owner of the vehicle, as opposed to the vehicle driver, for a violation of the City's red light camera ordinance.⁸ Specifically, the *Idris* court rejected the ordinance challengers' argument that the "vicarious liability" component of the ordinance violates the equal protection and due process clauses of the U.S. Constitution's Fourteenth Amendment.⁹ The *Idris* court's analysis will likely have a negative impact on future Fourteenth Amendment challenges of red light camera technology and owner liability presumptions.

Part II of this Recent Development examines the City of Chicago's red light camera ordinance as it relates to the facts of *Idris*. Part III analyzes the court's application of the rational basis test and the tenuous connection between the means and ends of the City's ordinance within the innocent owner context. Part IV examines the remaining options available to red light camera opponents in light of *Idris*. This Recent Development concludes by examining the impact this decision will have on the use of this technology and on future litigants who wish to challenge it under the U.S. Constitution.

⁷ 552 F.3d 564 (7th Cir. 2009).

⁸ *See Id.* at 566.

⁹ *Id.* at 565–67. In application, this is similar to a denial of the innocent owner defense, *see, e.g.*, *Idris v. City of Chicago*, No. 06 C 6085, 2008 U.S. Dist. LEXIS 3933, at *18, *21 (N.D. Ill. Jan. 16, 2008), *aff'd*, 552 F.3d 564 (7th Cir. 2009), or a presumption that the registered owner committed the violation, *see generally* FED. HIGH. ADMIN., U.S. DEP'T OF TRANSP., PUBL'N NO. FHWA-SA-05-002, RED LIGHT CAMERA SYSTEMS OPERATIONAL GUIDELINES 14 (2005), available at http://safety.fhwa.dot.gov/intersections/rlc_guide/rlcguide05jan.pdf (last visited Feb. 14, 2009) (comparing the two approaches taken by states—driver responsibility or registered owner responsibility) (on file with the North Carolina Journal of Law & Technology).

II. CHICAGO'S RED LIGHT CAMERA ORDINANCE

Given that federal courts have largely “avoided deciding the constitutionality” of red light camera programs,¹⁰ *Idris* may serve as a benchmark for how federal courts deal with Fourteenth Amendment issues created by this technology.¹¹ At a minimum, *Idris* suggests that any future Fourteenth Amendment challenge of Chicago’s red light camera program will likely be unsuccessful.

In 2003, the City of Chicago instituted a red light camera program.¹² The pertinent components of the red light ordinance at issue in *Idris* include: (1) the creation of a civil, non-criminal, penalty;¹³ (2) a presumption that the registered owner of the

¹⁰ See Kevin P. Shannon, *Speeding Towards Disaster: How Cleveland’s Traffic Cameras Violate the Ohio Constitution*, 55 CLEV. ST. L. REV. 607, 616 (2007). See generally *Hoekstra v. City of Arnold, Mo.*, No. 4:08CV0267 TCM, 2009 U.S. Dist. LEXIS 7465, at *49 (E.D. Mo. Feb. 3, 2009) (“[D]eny[ing] the motions to dismiss to the extent they challenge the constitutionality of the Ordinance, subject to further presentation of the parties’ positions on the constitutionality of the Ordinance . . .”) (citations omitted); *Shavitz v. Guilford County Bd. of Educ.*, 100 F. App’x. 146, 152 (4th Cir. 2004), *vacated* 270 F. Supp. 2d 702 (M.D.N.C. 2003) (“[Vacating because] the claims are not part of the same Article III case or controversy, and the district court erred by exercising supplemental jurisdiction . . .”).

¹¹ As precedent, *Idris* will be most applicable to federal litigation with analogous Fourteenth Amendment claims. See generally *Idris*, 552 F.3d at 565 (analyzing claims regarding the Fourteenth Amendment of the United States Constitution).

¹² Hilkevitch, *supra* note 5. The program is authorized under Chapter 9-102 of the Chicago Traffic Code. See CHI., ILL., CHI. TRAFFIC CODE § 9-102 (2008). The system must use “photographic means” to capture the registration plate of the violating vehicle. CHI., ILL., CHI. TRAFFIC CODE § 9-102-010(b) (2008). Eight Illinois counties and their respective municipalities are granted authority under state law to implement automated law enforcement systems at red light intersections. See generally 625 ILL. COMP. STAT. ANN. 5/11-208.6 (West 2008) (outlining the method by which “the counties of Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, and Will and . . . municipalities within those counties” may institute automated traffic law enforcement systems).

¹³ See CHI., ILL., CHI. TRAFFIC CODE § 9-102 (2008); 625 ILL. COMP. STAT. ANN. 5/11-208.6 (West 2008).

vehicle is liable for a violation;¹⁴ (3) the use of photographic images of the vehicle as “prima facie evidence of a violation;”¹⁵ and (4) the limited and narrow applicability of available defenses.¹⁶ Each of these components directly contributed to the conflict at issue in *Idris*.¹⁷

The distinguishing characteristic of the *Idris* litigation is the ordinance challengers’ (“appellants”) assertion that they were not driving at the time of the violation.¹⁸ In fact, one of the three named appellants was out of the country at the time of the alleged violation.¹⁹ Another argued that he received a ticket for a time

¹⁴ See CHI., ILL., CHI. TRAFFIC CODE § 9-102-020(a) (2008). Exceptions exist if the operator was given a “uniform traffic citation for a violation of Section 9-8-020(c) or Section 9-16-030(c),” e.g., an officer issued a duplicate ticket, see CHI., ILL., CHI. TRAFFIC CODE § 9-102-020(a)(1) (2008), the vehicle or registration plates are reported stolen, see CHI., ILL., CHI. TRAFFIC CODE § 9-102-020(a)(2) (2008), or the vehicle was a leased vehicle, see CHI., ILL., CHI. TRAFFIC CODE § 9-102-020(a)(3) (2008). “[T]he term ‘leased vehicle’ . . . [is] defined as a vehicle in which a motor vehicle dealership or manufacturer has, pursuant to a written document, vested exclusive possession, use, control and responsibility of the vehicle to the lessee during the periods the vehicle is operated by or for the lessee.” *Id.*

¹⁵ CHI., ILL., CHI. TRAFFIC CODE § 9-102-020(a) (2008).

¹⁶ See *supra* note 14 and accompanying text. A liability exception also exists if the vehicle was yielding right-of-way for an authorized emergency vehicle or was part of a lawful funeral procession. See CHI., ILL., CHI. TRAFFIC CODE § 9-102-020(b) (2008). Other grounds for defense are presumably available if the owner provides a basis for an administrative hearing. See CHI., ILL., CHI. TRAFFIC CODE § 9-102-040 (2008).

¹⁷ See discussion *infra* Part III. First, Chicago’s civil penalty does not affect a fundamental right; therefore, the “owner presumption” is analyzed under the rational basis standard. See *id.* Second, the elimination of an innocent owner defense merely creates an over-inclusive classification under an equal protection analysis. See *id.*

¹⁸ *Idris v. City of Chicago*, No. 06 C 6085, 2008 U.S. Dist. LEXIS 3933, at *5 (N.D. Ill. Jan. 16, 2008), *aff’d*, 552 F.3d 564 (7th Cir. 2009). However, the appellants do not dispute that they are the registered owners of the cited vehicles. Brief and Required Short Appendix of Plaintiffs-Appellants at 3, *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009) (No. 08-1363) [hereinafter Brief of Plaintiffs-Appellants].

¹⁹ Brief of Plaintiffs-Appellants, *supra* note 18, at 6.

when his vehicle was not in use.²⁰ The third appellant simply paid the fine.²¹ For the *Idris* challengers, the fact that the ordinance did not take into consideration whether they actually committed the violation supported their position that the ordinance was unconstitutional.²²

The appellants' constitutional claims focused, in part,²³ on violations of the Fourteenth Amendment.²⁴ Appellants claimed that the fine deprived them of their property without due process, resulting in a substantive due process violation,²⁵ because the ordinance made it "irrelevant whether the penalized party [*i.e.*, the owner of a car] actually violated a red traffic-signal."²⁶ Appellants

²⁰ *Id.* Appellees' brief states that the vehicle was not in use by "'an authorized agent'" or its "'sole owner.'" Brief of the City of Chicago, Chicago Office of Emergency Management and Communications, Chicago Department of Revenue, Chicago Department of Administrative Hearings, and Mayor Richard M. Daley at 11, *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009) (No. 08-1363) [hereinafter Brief of Defendants-Appellees].

²¹ Brief of Defendants-Appellees, *supra* note 20, at 12.

²² *See Idris*, 2008 U.S. Dist. LEXIS 3933, at *19–20 ("[The *Idris* challengers] argue that Chapter 9-102 suffers from 'overbreadth,' and that it unconstitutionally places liability on a vehicle's owner, even when the owner was not driving at the time of a red light violation.").

²³ *See Idris*, 552 F.3d at 567 (claiming procedural due process violations).

²⁴ *See* Brief of Plaintiffs-Appellants, *supra* note 18, at 8. The case originated in a state court, but was removed to federal court by the City of Chicago. *See* Brief of Defendants-Appellees, *supra* note 20, at 2. The federal district court granted summary judgment thereby dismissing the appellants' federal and state-law claims. *See id.*

²⁵ *See* Brief of Plaintiffs-Appellants, *supra* note 18, at 6 (describing Count II of the ordinance challengers' Amended Complaint alleging a violation of substantive due process).

²⁶ *Idris*, 2008 U.S. Dist. LEXIS 3933, at *17–18 (quoting an allegation from the ordinance challengers' complaint). Without an "innocent owner" exception to the ordinance, the most practical defense is to show that the violation did not occur at all. *See* Brief of Defendants-Appellees, *supra* note 20, at 30–34. *But see* Automated Traffic Law Enforcement Model Law § 7(b) (1997), available at <http://www.ncutlo.org/autoenforce622.htm> (last visited Feb. 24, 2009) ("The court may consider in defense of a violation . . . [e]vidence satisfactory to the Court that the person named in the citation was not operating the vehicle at the time of the violation") (on file with the North Carolina Journal of Law & Technology).

also claimed that an equal protection violation resulted from the inconsistent treatment of various vehicle ownership groups;²⁷ specifically, owners that produce valid leases are not subject to liability.²⁸ The *Idris* court's treatment of these claims could have implications beyond the Seventh Circuit, because other jurisdictions also provide exceptions for lessors²⁹ and consider it irrelevant whether the penalized party actually committed the violation.³⁰

III. CHICAGO'S RED LIGHT CAMERA PROGRAM AND THE RATIONAL BASIS TEST

The substantive due process and equal protection claims in *Idris* were subject to a difficult, if not impossible, obstacle.³¹

²⁷ See *Idris*, 2008 U.S. Dist. LEXIS 3933, at *6. Plaintiff further argues that the violation itself is treated differently under state law, *id.*, because under Illinois state law, running a red light is subject to criminal sanctions, *id.* at *14. The district court dismissed this argument due to the fact that similarly situated people are not being treated differently under the law—code or statute—that is being applied to the respective groups. *Id.* Rather, there are merely multiple punishments for the same conduct. *Id.*

²⁸ See *id.* at *6; see also CHLO, ILL., CHI. TRAFFIC CODE § 9-102-020(a)(3) (2008).

²⁹ See TEX. TRANSP. CODE ANN. § 707.013(b)(2) (Vernon Supp. 2008).

³⁰ See TEX. TRANSP. CODE ANN. § 707.013(a) (Vernon Supp. 2008); CLEVELAND, OHIO, TRAFFIC CODE § 413.031(b)(1) (2008). Cleveland's ordinance is unique in that it allows the owner to submit a defense, via affidavit, that another was driving, but this does not shift liability away from the owner if the identified driver denies the owner's claim. See CLEVELAND, OHIO, TRAFFIC CODE § 413.031(k)(4) (2008). But see, e.g., VA. CODE ANN. § 15.2-968.1(D) (2008) (creating an owner liability presumption that may be rebutted if the owner files an affidavit or testifies in open court that "he was not the operator of the vehicle at the time of the alleged violation").

³¹ "[L]aws generally are declared unconstitutional when . . . [strict scrutiny] is applied." ERWIN CHEMERINSKY, CONSTITUTIONAL LAW PRINCIPLES AND POLICIES § 6.5, at 542 (3rd ed. 2006). Only a few laws have been invalidated by means of the rational basis test. See *id.* § 6.5, at 540 (citing *Romer v. Evans*, 517 U.S. 620 (1996); *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Zobel v. Williams*, 457 U.S. 55 (1982); *United States Dep't of Agric. v. Moreno*, 413 U.S. 528 (1973)). Appellants also made a procedural due process claim that failed. *Idris v. City of Chicago*, 552 F.3d 564, 567 (7th Cir. 2009). Analysis of this issue is beyond the scope of this work.

Specifically, a strict scrutiny analysis of the ordinance is unavailable because neither a fundamental liberty interest nor a suspect class exists within the *Idris* context.³² A fundamental liberty interest is lacking because the property interest at issue, a ninety-dollar civil penalty, is too modest.³³ An equal protection violation is not present, given that the parties do not even attempt to argue that a suspect class exists.³⁴ Consequently, both the substantive due process and equal protection claims are subject to rational basis review.³⁵

Under the rational basis test “a law will be upheld if it is *rationally related to a legitimate government purpose*.”³⁶ Thus, as applied in *Idris*, the red light camera ordinance must have an objective that is legitimate for the City of Chicago to pursue.³⁷ If legitimate, Chicago’s objective is not required to be “compelling or important.”³⁸ Furthermore, the means used by Chicago to fulfill its

³² See *infra* notes 33–34 and accompanying text; see also CHEMERINSKY, *supra* note 31, § 6.5, at 541–42; Thomas M. Stanek, *Photo Radar in Arizona: Is It Constitutional?*, 30 ARIZ. ST. L.J. 1209, 1235, 1238–39 (1998). Intermediate scrutiny is also unavailable because the ordinance does not involve “gender discrimination, discrimination against non-martial children, discrimination against undocumented alien children with regard to education, and regulation of commercial speech and of speech in public forums.” CHEMERINSKY, *supra* note 31, § 6.5, at 541 (footnotes omitted).

³³ *Idris*, 552 F.3d at 566. Furthermore, two of the named appellants are corporations; they “have no fundamental rights.” Brief of Defendants-Appellees, *supra* note 20, at 20 (citing Nat’l Paint & Coatings Ass’n v. City of Chi., 45 F.3d 1124, 1129 (7th Cir. 1995)).

³⁴ See *Idris v. City of Chicago*, No. 06 C 6085, 2008 U.S. Dist. LEXIS 3933, at *10-11 (N.D. Ill. Jan. 16, 2008), *aff’d*, 552 F.3d 564 (7th Cir. 2009).

³⁵ See *Idris*, 552 F.3d at 566-67. “All laws challenged under the due process clause or equal protection must meet at least rational basis review.” CHEMERINSKY, *supra* note 31, § 6.5, at 540.

³⁶ CHEMERINSKY, *supra* note 31, § 6.5, at 540 (citing *Pennell v. City of San Jose*, 485 U.S. 1 (1988); *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166 (1980); *Allied Stores v. Bowers*, 358 U.S. 522 (1959); *Williamson v. Lee Optical*, 348 U.S. 483 (1955); *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421 (1952)).

³⁷ See *id.*

³⁸ *Id.* § 9.1, at 672.

objective need only be reasonable or rational in light of the objective.³⁹

The burden is on the ordinance challengers to (1) show that there are no conceivable legitimate purposes or (2) prove that the means are so arbitrary as to be an unreasonable or irrational method for attaining the City's objective.⁴⁰ This is an extremely difficult burden for the appellants because rational basis review "employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task."⁴¹ Consequently, the rational basis test allows potentially "[u]nfair laws . . . to stand because a conceivable legitimate purpose can be identified for virtually any law."⁴²

As the district court states in *Idris*, "[t]he rational basis test under substantive due process is identical to the rational basis test under equal protection."⁴³ For that reason, the first step in analyzing *Idris* is to identify a conceivably legitimate purpose for the City's ordinance.⁴⁴ Chicago argues that it has a legitimate interest in "enforcing its traffic regulations."⁴⁵ By extension, this interest reasonably includes public safety and efficient law enforcement components.⁴⁶

³⁹ See *id.* § 6.5, at 540, § 9.1, at 672.

⁴⁰ See *id.* § 6.5, at 540.

⁴¹ *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976) (analyzing classification under equal protection); see also *CHEMERINSKY*, *supra* note 31, § 6.5, at 540.

⁴² *CHEMERINSKY*, *supra* note 31, § 9.2, at 679; see also *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911) ("A classification having some reasonable basis does not offend . . . [the equal protection] clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality.").

⁴³ *Idris v. City of Chicago*, No. 06 C 6085, 2008 U.S. Dist. LEXIS 3933, at *19 (N.D. Ill. Jan. 16, 2008), *aff'd*, 552 F.3d 564 (7th Cir. 2009).

⁴⁴ See *supra* note 40 and accompanying text.

⁴⁵ Brief of Defendants-Appellees, *supra* note 20, at 15.

⁴⁶ See generally Jonathan Miller, *With Cameras on the Corner, Your Ticket is in the Mail*, N.Y. TIMES, Jan. 6, 2005, at G1 (describing the safety arguments associated with this technology); Stanek, *supra* note 32, at 1210 ("[C]ities are 'flocking to photo radar' to facilitate the traffic enforcement goals of lowering

Given that running a red light is relatively dangerous,⁴⁷ Chicago's interest in public safety will ensure survival under rational basis review regardless of whether the innocent vehicle owner or violating driver challenges the relationship between the City's purpose and the red light camera ordinance.⁴⁸ Avoiding consideration of any underlying safety justification,⁴⁹ the *Idris* court found that photographic evidence of the violation and the presumption of owner liability are rational because it reduces the costs of law enforcement,⁵⁰ increases violation detection,⁵¹ and

speeds and reducing accidents.”) (footnote omitted); Mary Lehman, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U. TOL. L. REV. 815, 829 (2002) (“Red light cameras . . . provid[e] twenty-four hour surveillance of traffic intersections, ‘thereby freeing officers to focus on other enforcement needs.’”) (footnote omitted).

⁴⁷ For example, a Federal Highway Administration report states that drivers running red lights “is estimated to produce more than 100,000 crashes and approximately 1,000 deaths per year in the United States.” FED. HIGH. ADMIN., U.S. DEP’T OF TRANSP., PUBL’N NO. FHWA-HRT-05-049, SAFETY EVALUATION OF RED-LIGHT CAMERAS—EXECUTIVE SUMMARY 1 (2005) (footnote omitted), available at <http://www.tfhrc.gov/safety/pubs/05049/05049.pdf> (last visited Feb. 24, 2009) (on file with the North Carolina Journal of Law & Technology).

⁴⁸ One must assume that use of red light technology is rationally related to safety improvements. See *supra* note 36 and accompanying text. See generally Stanek, *supra* note 32, at 1235 (“[U]nder the rational basis standard of review, photo radar is clearly reasonably related to a municipality’s interest in public safety.”).

⁴⁹ Chicago and the challengers brought up the issue of safety in their respective briefs. See Brief of Defendants-Appellees, *supra* note 20, at 15, 22; Brief of Plaintiffs-Appellants, *supra* note 18, at 19–20, 24. The *Idris* court performed a narrow analysis of this issue in not examining the safety justification, see *infra* notes 50–52 and accompanying text; however, this approach was likely warranted given that the challengers’ claims were primarily rooted in the owner liability presumption, see *Idris v. City of Chicago*, 552 F.3d 564, 565–67 (7th Cir. 2009).

⁵⁰ *Idris*, 552 F.3d at 566. This may be viewed as a component of the efficient law enforcement purpose. See *id.* For the sake of this work, it will be assumed that this benefit is debatable and potentially incorrect in practice. In part, this is because effective methods exist to escape red light camera detection. See Miller, *supra* note 46 (“Some drivers have escalated the technological arms race by using simple sprays and shields that they believe obscure the license plates when photographed.”). Therefore, for the ordinance to serve its purpose, law enforcement resources will need to be directed towards policing for those

prevents owners from easily escaping liability.⁵² The court also found that the distinction between lessors and owners is rational because owners can identify the violating driver and exercise control over that individual.⁵³

Nevertheless, the rationales identified by the *Idris* court are seemingly peripheral considering that safety is the widely advertized basis for public support of red light camera programs.⁵⁴ Unfortunately, the rationality of holding an innocent owner liable becomes tenuous within the safety context, because the non-owner drivers who create the safety risk are only indirectly affected by the direct punishment of the vehicle's registered owner.⁵⁵ In effect, this approach creates thousands of non-owner violators, which the system merely assumes will be deterred from running red lights by the owner.⁵⁶

devices. *Id.* (“[M]any states, like Maryland, now specifically outlaw the use of them.”).

⁵¹ *Idris*, 552 F.3d at 566.

⁵² *Id.*

⁵³ See generally *id.* at 567 (“The City’s goal is to impose the fine on the person who according to readily available legal documents is in charge of the car, and therefore either responsible for the violation or able to determine whether the car is driven by law-abiding persons.”).

⁵⁴ See generally City of Chicago Official Homepage, Chicago Red-Light Cameras, <http://egov.cityofchicago.org> (follow “City Departments” hyperlink; then follow “Office of Emergency Management and Communication” hyperlink; then follow “Red-Light Camera Enforcement” hyperlink under “Traffic Management Authority”; then follow “Chicago Red-Light Cameras” hyperlink) (last visited Feb. 14, 2009) (“[Chicago] is using red-light camera enforcement to make Chicago intersections safer.”) (on file with the North Carolina Journal of Law & Technology).

⁵⁵ See generally City of Chicago Official Homepage, *supra* note 2 (“In cities that have red-light cameras, 90 percent of the time, the registered owner of the vehicle was behind the wheel when the violation occurred.”). In Chicago, this means that in 2008 approximately 57,956 violations were due to non-owner driver activity. See generally *id.* (indicating that ten percent of violators are not the owners); Hilkevitch, *supra* note 5 (identifying 579,560 violations in 2008).

⁵⁶ See *supra* note 55 and accompanying text. The *Idris* court assumes that “an owner can insist that the driver reimburse the outlay if he wants to use the car again (or maintain the friendship)” or “take more care when lending their car[], and . . . pass the expense on to the real wrongdoer.” *Idris*, 552 F.3d at 566.

Given that public support relies heavily on a safety justification,⁵⁷ a meaningful assessment of Chicago's ordinance should require an evaluation of whether the use of this technology is an arbitrary and unreasonable method for improving safety.⁵⁸ Using red light cameras as a means to improve safety requires consideration of at least three possible criticisms.⁵⁹ First, red light cameras are frequently shown to increase the risks associated with intersections.⁶⁰ Specifically, red light camera intersections allegedly increase rates of rear end accidents, presumably because

⁵⁷ See generally City of Chicago Official Homepage, *supra* note 2 (“First and foremost, this program is about safety—safety of motorists, pedestrians, bicyclists, and anyone in or near an intersection.”).

⁵⁸ See *supra* notes 40, 54 and accompanying text.

⁵⁹ See *infra* notes 60, 63–66 and accompanying text.

⁶⁰ See, e.g., *Red Light Camera Studies Roundup*, THENEWSPAPER.COM, May 31, 2005, <http://www.thenewspaper.com/news/04/430.asp> (last visited Feb. 24, 2009) (on file with the North Carolina Journal of Law & Technology). “Comprehensive studies conclude cameras actually increase crashes and injuries, providing a safety argument not to install them [P]ublic policy should avoid conflicts of interest that enhance revenues for government and private interests at the risk of public safety.” *Id.* (quoting a 2008 University of South Florida report). The studies found that:

The cameras were associated with an increase in total crashes[.] . . .

The aggregate EB results suggested that this increase was 29%[.] . . .

The cameras were associated with an increase in the frequency of injury crashes[.] . . . The aggregate EB results suggested an 18% increase, although the point estimates for individual jurisdictions were substantially higher (59%, 79%, or 89% increases) or lower (6% increase or a 5% decrease.

Id. (quoting Barbara Langlard-Orban, et al., *Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if They are Used in Florida?*, FLORIDA PUB. HEALTH REV. (2008)). “The cameras are correlated with an increase in total crashes of 8% to 17%.” *Id.* (quoting a 2005 Virginia Department of Transportation study). “Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections.” *Id.* (quoting a 2004 North Carolina A&T State University study). *But see* FED. HIGH. ADMIN., *supra* note 47 (“Crash effects detected were consistent in direction with those found in many previous studies: decreased right-angle crashes and increased rear end ones.”).

drivers attempt to stop suddenly in reaction to a signal change;⁶¹ whereas, the technology is intended to reduce those accidents in which a red light runner is hit in the side by another vehicle traveling perpendicular to the red light violator.⁶² Second, the technology has been shown to be the object of manipulation: distortion of safety improvements,⁶³ shortening of traffic signals,⁶⁴ and selection of intersections for fine-generating potential rather than positive safety effects.⁶⁵ Finally, the ordinance itself fails to

⁶¹ See generally FED. HIGH. ADMIN., *supra* note 47; Lehman, *supra* note 46, at 832 (“[C]ameras are causing more accidents from ‘panic stops’ . . .”).

⁶² See generally City of Chicago Official Homepage, *supra* note 54 (describing Chicago’s search for “locations with the highest incidence of so-called ‘right-angle’ crashes—those consistent with a driver running a red light”).

⁶³ See, e.g., *Houston Manipulated Study to Make Red Light Cameras Appear Safer*, THENEWSPAPER.COM, Feb. 2, 2009, <http://www.thenewspaper.com/news/26/2675.asp> (last visited Feb. 8, 2009) (on file with the North Carolina Journal of Law & Technology). “Houston police began to push [Professor Robert M.] Stein to weaken his design [for a study of Houston’s red light camera program] to match techniques used in studies conducted by insurance industry researchers and others with an interest in promoting the use of photo enforcement.” *Id.* “Houston Mayor Bill White had selected Urban Politics Professor Robert Stein [at Rice University] to create a report on the engineering safety performance of the first fifty automated ticketing machines installed . . .” *Id.* According to a lawsuit associated with this matter, Professor Stein was urged to alter the negative data compiled from the study. See *id.*

⁶⁴ See, e.g., *Tennessee: Refunds for Photo Tickets on Short Yellow*, THENEWSPAPER.COM, Mar. 13, 2008, <http://www.thenewspaper.com/news/22/2269.asp> (last visited Feb. 8, 2009) (describing a Chattanooga, Tennessee red light camera intersection with an “illegally short yellow time”) (on file with the North Carolina Journal of Law & Technology); Jacqui Cheng, *Italian Red-Light Cameras Rigged with Shorter Yellow Lights*, ARS TECHNICA, Feb. 2, 2009, <http://arstechnica.com/tech-policy/news/2009/02/italian-red-light-cameras-rigged-with-shorter-yellow-lights.ars> (last visited Feb. 25, 2009) (“A programmer and 108 other individuals are being investigated for rigging a ‘smart’ traffic light system to purposefully trap drivers [with quicker yellow to red signals] and fine them for violations, with some speculating that up to a million Italian drivers have been unfairly slapped with fines.”) (on file with the North Carolina Journal of Law & Technology).

⁶⁵ See, e.g., Miller, *supra* note 46 (“[A] former employee testified that Lockheed Martin IMS, which operated the San Diego system regularly scouted intersections . . . based on high traffic volume, not locations that were most

create a mechanism to remove dangerous drivers from the road.⁶⁶ Theoretically, dangerous drivers who pay their fines⁶⁷ can accumulate an infinite number of civil citations without losing their driving privileges,⁶⁸ which in turn weakens the program's safety justification.⁶⁹

These criticisms represent a sampling of those made against red light camera technology.⁷⁰ Yet, under the rational basis test, these criticisms will not likely provide an adequate foundation for a successful challenge; at a minimum, they will have little impact in the Seventh Circuit as a result of *Idris*.⁷¹ As *Idris* demonstrates, a successful constitutional challenge in federal court will be unlikely because claims that are subject to rational basis review are rarely successful.⁷² Furthermore, a successful challenge will be

accident-prone . . . [identifying] locations with steep gradients and short yellow-light times.”).

⁶⁶ See generally CHI., ILL., CHI. TRAFFIC CODE §9-102 (2008) (providing no meaningful mechanism to negatively impact the owner or driver's license or insurance status).

⁶⁷ CHI., ILL., CHI. TRAFFIC CODE §9-102-060(b) (2008) (“Failure of the . . . [owner] to pay such fine or penalty within 21 days of the date of the notice may result in the immobilization of the person's vehicle . . .”).

⁶⁸ See generally *id.* § 9-102 (providing no meaningful mechanism to remove violators from the road for being a dangerous driver).

⁶⁹ See generally Shannon, *supra* note 10, at 631 (“Civil enforcement of speeding or red-light offense by means of a camera system does little to make the roads safer, because it does not take violators off the road.” (footnote omitted)). Seemingly, this ordinance could make the Chicago's roads more dangerous if human law enforcement is reduced at intersections and drivers become indifferent to the fine.

⁷⁰ See, e.g., Jon Nielsen, *Red-light Camera Rules Questioned*, DALLAS MORNING NEWS, Feb. 3, 2009, at 3B, available at NewsBank, Record No. 1181210582 (“These tickets are not safety-related. . . . They're revenue-related.”); Hilkevitch, *supra* note 5 (describing the increase in public transportation costs when bus drivers receive violations); Karen Ann Cullotta, *Chicago Links Street Cameras to its 911 Network*, N.Y. TIMES, Feb. 21, 2009, at A9 (describing the use of cameras for surveillance of the Chicago's streets); Miller, *supra* note 46 (“[Mark Kleinschmidt, a city councilman in Chapel Hill, N.C.] ‘disapprove[s] of the privatization of a police function . . .’”).

⁷¹ See generally *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009) (holding that the ordinance survived rational basis review).

⁷² See *supra* note 31 and accompanying text.

unlikely because defining a legitimate government purpose in this context is rather straightforward, given that the search reasonably leads to public safety.⁷³

Nonetheless, the *Idris* challengers, and other red light camera opponents,⁷⁴ seek to concentrate on revenue generation as the exclusive government purpose behind red light camera technology.⁷⁵ If revenue generation were the only conceivable interest, then using red light cameras to fulfill that objective would not survive rational basis review because the means bear no relation to the purpose.⁷⁶ However, without a change in factual circumstances surrounding the use of this technology, opponents will have no success in limiting the purpose to revenue generation for rational basis review.⁷⁷

Finally, uncertainties regarding the rational connection between red light cameras and public safety are simply inconclusive.⁷⁸ In other words, there is insufficient evidence to show that the means are purely arbitrary;⁷⁹ therefore, a court will defer to the legislative body's judgment.⁸⁰ As the district court in *Idris* correctly states, "rational basis review 'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'"⁸¹

⁷³ See generally *Idris v. City of Chicago*, No. 06 C 6085, 2008 U.S. Dist. LEXIS 3933, at *19 (N.D. Ill. Jan. 16, 2008), *aff'd*, 552 F.3d 564 (7th Cir. 2009) (describing the City's justification as "promoting traffic safety").

⁷⁴ See, e.g., Nielsen, *supra* note 70.

⁷⁵ See Brief of Plaintiffs-Appellants, *supra* note 18, at 24–25.

⁷⁶ See generally Andrew W.J. Tarr, *Picture It: Red Light Cameras Abide by the Law of the Land*, 80 N.C. L. REV. 1879, 1884 (2002) ("[T]he use of red light cameras bears no rational relation to . . . [generation of revenue as] a purpose.").

⁷⁷ See discussion *supra* notes 39–40 and accompanying text.

⁷⁸ See discussion *supra* note 60 and accompanying text.

⁷⁹ See discussion *supra* notes 39–40 and accompanying text.

⁸⁰ See discussion *supra* note 41 and accompanying text; see *infra* note 81 and accompanying text.

⁸¹ *Idris v. City of Chicago*, No. 06 C 6085, 2008 U.S. Dist. LEXIS 3933, at *12–13 (N.D. Ill. Jan. 16, 2008), *aff'd*, 552 F.3d 564 (7th Cir. 2009) (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1992)); see also Tarr, *supra* note 76, at 1888 ("Whether these red light cameras are actually promoting compliance and safety—and they seem to be—is not for the court to decide. The legislature

In the end, even if the means implemented by Chicago unfairly subject the *Idris* challengers to liability, relative to other groups, it is only an indication that the ordinance is overinclusive.⁸² Specifically, they were not provided an exception under the ordinance similar to that provided for lessors;⁸³ however, it is acceptable for laws to contain imperfections, including overinclusion, under rational basis review.⁸⁴

IV. REMAINING OPTIONS FOR RED LIGHT CAMERA OPPONENTS

Opponents of red light camera programs are left with fewer options in challenging the spread of this technology after *Idris*.⁸⁵ One avenue is to educate the public about the flaws of red light camera enforcement, particularly the safety component.⁸⁶ For a system that is inherently vulnerable to public misgivings,⁸⁷ this could be the most effective form of attack. However, an underlying concern remains that if accurate information regarding the validity of the safety justification is unavailable, or even

must determine the means for achieving its goals. The court must only find a rational relation between the means and purpose of the statute.” (footnote omitted)).

⁸² See *Idris v. City of Chicago*, 552 F.3d 564, 567 (7th Cir. 2009).

⁸³ See *id.*

⁸⁴ See CHEMERINSKY, *supra* note 31, § 9.2, at 686.

⁸⁵ See generally Tarr, *supra* note 76, at 1895 (“Courts rendering judgment on the constitutionality of red light cameras will need to address whether the cameras are an unconstitutional invasion of privacy . . . and whether the red light camera system is an unconstitutional hidden tax.”) (footnotes omitted).

⁸⁶ See discussion *supra* notes 60, 63–66 and accompanying text.

⁸⁷ See generally Michael W. Hoskins, *State Puts Brakes on Red-Light Cameras*, THE IND. LAWYER, Sept. 3, 2008, at 3, available at LEXIS, Ind. News Sources (“‘That this is a source of revenue stirs up citizen emotions because it’s seen as just one more way to squeeze money from people,’ . . . [Dearborn Superior Judge G. Michael Witte stated.]”); Shannon, *supra* note 10, at 636 (“[A]ny time a municipality in the United States has been asked to vote on the use of camera enforcement, the bill has been defeated.”).

suppressed,⁸⁸ then government entities might effectively use red light camera programs solely to generate revenue.⁸⁹

Another avenue is to challenge red light camera programs under state law.⁹⁰ In several states, this has been a successful option.⁹¹ For example, in North Carolina the use of red light camera technology has been significantly reduced as a result of the decision in *Shavitz v. City of High Point*,⁹² a North Carolina Court of Appeals ruling.⁹³ Specifically, the court found that Article IX, Section 7 of the North Carolina Constitution “applies to the civil penalties assessed by . . . [local governments] under . . . red light camera ordinance[s].”⁹⁴ Article IX, Section 7(a) of the North Carolina Constitution states that “the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully

⁸⁸ See *Houston Manipulated Study to Make Red Light Cameras Appear Safer*, *supra* note 63.

⁸⁹ See, e.g., Nielsen, *supra* note 70.

⁹⁰ See, e.g., Shannon, *supra* note 10, at 617; see also *Oregon v. Hass*, 420 U.S. 714, 719 (1975) (“[A] State is free as a matter of its own law to impose greater restrictions on police activity than those . . . [the U.S. Supreme] Court holds to be necessary upon federal constitutional standards.”) (citations omitted).

⁹¹ See Shannon, *supra* note 10, at 617; see also *North Carolina Supreme Court Eliminates Profit for Red Light Cameras*, THENEWSPAPER.COM, June 30, 2007, <http://www.thenewspaper.com/news/18/1834.asp> (last visited Feb. 25, 2009) (on file with the North Carolina Journal of Law & Technology). “[T]he Minnesota Supreme Court . . . struck down red light cameras as a violation of state law . . . and the California Supreme Court[] . . . [refused] to review a[n] appellate ruling that found a city operated its red light camera program in violation of state law.” *North Carolina Supreme Court Eliminates Profit for Red Light Cameras*, *supra*; see also *Idris v. City of Chicago*, 552 F.3d 564, 567 (7th Cir. 2009) (citing *Minnesota v. Kuhlman*, 729 N.W.2d 577 (2007)).

⁹² 630 S.E.2d 4 (N.C. Ct. App. 2006), *cert. denied*, 648 S.E.2d 845 (2007).

⁹³ See generally *North Carolina Supreme Court Eliminates Profit for Red Light Cameras*, *supra* note 91 (listing five major North Carolina cities that have ended that red light camera programs since the ruling).

⁹⁴ *Shavitz v. City of High Point*, 630 S.E.2d 4, 15 (N.C. Ct. App. 2006), *cert. denied*, 648 S.E.2d 845 (2007).

appropriated and used exclusively for maintaining free public schools.”⁹⁵

The effect of the North Carolina ruling is that ninety percent of fine revenues must be handed over to a public school system.⁹⁶ For a city like High Point, North Carolina, which had a fifty-dollar fine—of which thirty-five dollars went to the vendor—the ruling creates a thirty dollar deficit after a forty-five dollar payment to a public school system.⁹⁷ In response to this bleak financial outlook, “Charlotte, Fayetteville, Greensboro, Greenville and High Point have shut down ticketing operations.”⁹⁸

V. IMPLICATIONS OF THE *IDRIS* DECISION

In applying the rational basis test, the *Idris* court reached the correct result.⁹⁹ Given that little precedent exists in this area,¹⁰⁰ the *Idris* decision will likely have a considerable impact on the use of this technology. For proponents of red light cameras, *Idris* may be invaluable in discouraging substantive due process and equal protection litigation that seeks to challenge the use of this technology. Consequently, a long-term effect of this decision may be that Fourteenth Amendment claims will be less effective for

⁹⁵ *Id.* at 7 (quoting N.C. CONST. art. IX, § 7(a)).

⁹⁶ *See id.* at 16. “In exercise of this authority, the Legislature has enacted section 115C-437 of the General Statutes: ‘The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, Sec[ti]on 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected.’” *Id.* (quoting N.C. Gen. Stat. § 115C-437 (2005)).

⁹⁷ *See North Carolina Appeals Court Rules Against Red Light Cameras*, THENEWSPAPER.COM, May 16, 2006, <http://www.thenewspaper.com/news/11/1132.asp> (last visited Feb. 25, 2009) (on file with the North Carolina Journal of Law & Technology).

⁹⁸ *North Carolina Supreme Court Eliminates Profit for Red Light Cameras*, *supra* note 91. The ruling also means that “High Point must now pay Guilford County Schools \$1,453,703 while Charlotte owes about \$4.6 million to Charlotte-Mecklenburg Schools.” *Id.*

⁹⁹ *See supra* Part III.

¹⁰⁰ *See supra* note 10 and accompanying text.

challengers of this technology¹⁰¹ and any underlying presumption of owner liability.¹⁰² At a minimum, the City of Chicago will be less hesitant in going forward with its plan to increase the scope of its own red light camera program.¹⁰³

¹⁰¹ Additionally, red light camera technology that is capable of capturing the identity of the driver will likely become less desirable given that the *Idris* decision validates a system that is not required to capture an image of the driver. *See generally* *Idris v. City of Chicago*, 552 F.3d 564, 566 (7th Cir. 2009) (“A camera can show reliably which cars and trucks go through red lights but it is less likely to show who was driving.”). Considering that *Idris* validates a system that embraces a presumption of owner liability, the burden of a rebuttable presumption may be a less attractive approach. *See supra* notes 14, 30 and accompanying text.

¹⁰² *See generally* *Idris*, 552 F.3d at 566 (finding the presumption valid). Paradoxically, the opinion states that the City could have asserted an affirmative defense that would have taken away the court’s ability to hear this case; however, they did not challenge the appellants’ reservation of federal issues for federal court. *See id.* at 565. Is it possible that the City, and likely the vendor, desired a precedent which confirmed the validity of their program? Without the burden of driver identification, this precedent may benefit vendors of this technology the most by allowing them to market this technology as a legally viable option. *See generally* Heather Lynch, *Success Spells Loss of City Business For Red-Light Camera Manufacturer*, THE DAILY RECORD, Dec. 11, 1999, at 5, available at LEXIS, Md. News Sources (“[A]s more of the cameras are installed . . . the number of drivers running red lights will decrease, rendering the cameras—and the subsequent new installations—pointless. Lockheed Martin IMS, based in New Jersey, is OK with that. The 15-year-old company long ago developed a revenue-cost model . . . to provide a service until a municipality doesn’t need it any more, then move onto the next municipality ‘The whole [point of the] equation is to spread out your revenues.’”)

¹⁰³ Spielman, *supra* note 4 (“The ruling . . . clears the way for a major expansion that will install cameras at more than 330 accident-prone Chicago intersections by 2012.”). Additionally, proposals have been presented to Chicago’s City Council that claim “Chicago could rake in ‘at least \$200 million’ a year—and wipe out the entire projected deficit for 2009—by using its vast network of redlight and surveillance cameras to hunt down uninsured motorists.” Fran Spielman, *Uninsured Drivers Might Be Focus of City Cameras*, CHI. SUN-TIMES, Mar. 17, 2009, at 7, available at NewsBank, Record No. 200903170010.