**IN THE SUPREME COURT OF IOWA**

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**NO. 17-1803**

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**RICKIE RILEA**
**TIMOTHY RILEY**

**Petitioners-Appellees,**

**vs.**

**IOWA DEPARTMENT OF TRANSPORTATION,**

**Respondent-Appellant.**

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**Appeal from the Iowa District Court for Polk County**
**The Honorable Eliza Ovrom, Judge**

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# RESPONDENT-APPELLANT'S REPLY BRIEF

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## I. PETITIONERS FAIL TO ADDRESS DOT'S GRANT OF AUTHORITY UNDER IOWA CODE SECTION 321.3. THERE IS NO WALL OF SEPARATION BETWEEN DOT AND DPS. THE TWO AGENCIES WORK TOGETHER IN ENFORCING TRAFFIC PROVISIONS IN IOWA CODE CHAPTER 321.

The basic theme of petitioners' brief is DOT, in all circumstances, is limited in its enforcement provisions by Iowa Code section 321.477 (2017) as it stood before amendment.[1] Outside of the offenses itemized in section 321.477 (2017) and Operating While Intoxicated (OWI), petitioners contend DPS has exclusive statewide enforcement authority for this state's primary highway system, and even if an offense occurs in the presence of a DOT officer on patrol, the officer is supposed to look the other way. Petitioners' brief offers up a historical exegesis in support of their position, and an accompanying chart. Their presentation falls incomplete. When examined in context, it becomes readily apparent any line of demarcation between DPS and DOT is far more attenuated than petitioners would have this Court conclude.

[1]As noted in DOT's initial brief, DOT's declaratory orders applied the law as of March 30, 2017. DOT, for simplicity, will refer to "section 321.477 (2017)" to cite the provision in effect on March 30, 2017. That statute appears in the biennial hardbound 2017 Code of Iowa. The statute amended effective May 11, 2017, *see* 2017 Iowa Acts ch. 149, § 3 (H.F. 463), will be referenced as "section 321.477 (as amended)."

Iowa Code section 321.3, for instance, is not mentioned once in petitioners' brief. Nor was the statute addressed by the district court. The provision represents an explicit conferral of power upon DOT to enforce provisions in Iowa Code chapter 321, declaring: "The director [DOT director] is hereby *vested with the power and is charged with the duty* of observing, administering, *and enforcing the provisions of this chapter*" (emphasis added).

Section 321.3 must be given meaning. Every statute is presumed effective in its entirety. *See* Iowa Code § 4.4(2). There is nothing vague about section 321.3. Its language is straightforward. It does not say DOT's director is charged with the duty of enforcing *only* the provisions in Iowa Code section 321.477 (2017). It *commands* the director to enforce all of chapter 321. Nor does the statute obligate DOT's director to share the authority with any other agency.

Petitioners, however, point to Iowa Code section 321.2(2) which provides for the state patrol of the department of public safety (DPS) to enforce the chapter 321 provisions "relating to traffic on the public highways of the state." Petitioners' brief, p. 33.[2] But that provision is followed by

[2]References to pages in petitioners' brief are to the page numbers in their proof brief filed March 8, 2018. DOT is aware after appendix citations are included pagination can deviate from the page numbers set forth in the

Iowa Code section 321.2(3) obligating *both* DOT and DPS to "cooperate to insure the proper and adequate enforcement of the provisions" of Iowa Code chapter 321. And Iowa Code section 321.2(1) declares: "Except as otherwise provided by law, the state department of transportation shall administer and enforce the provisions of this chapter." Added to this mix is Iowa Code section 80.22, which petitioners place great reliance upon, and its language regarding other departments beyond DPS being precluded from employing "special" peace officers or conferring any "police powers" specifically reserved by 1939 Iowa Acts, ch. 120.

What do these various provisions mean for DOT's enforcement role regarding Iowa Code chapter 321? Petitioners argue "the enforcement of traffic laws is *vested* solely in the DPS." Petitioners' brief, p. 46 (emphasis added). But that assertion is too simplistic and inconsistent with the statutory provisions. Petitioners' contention should raise a red flag with this Court, especially their use of the word "vested." That word is used in Iowa Code section 321.3 stating DOT's director "is *vested* with the power" of enforcing chapter 321 (emphasis added). "Vested" means "fully and unconditionally guaranteed as a legal right, benefit, or privilege." Merriam Webster Collegiate Dictionary (Tenth Edition) (1995) at 1314. Therefore,

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proof brief versus those in the final brief.

just from the clear meaning of the statute, petitioners are on thin ice unequivocally suggesting in the face of section 321.3 DPS is "vested" with "sole" authority to enforce traffic laws.

To make a complete analysis, DOT's position as the agency charged with the responsibility "for the planning, development, *regulation* and improvement of transportation in the state" must be placed within proper context. *See* Iowa Code § 307.2 (emphasis added). DOT, unlike any other agency except DPS, has been accorded authority to establish a motor vehicle enforcement division with peace officers patrolling the highways statewide. *See*, *e.g.*, Iowa Code §§ 321.476-321.481.

DOT's officers receive peace officer training and are as qualified as any peace officer in Iowa. App. pp. 120-121, 174-175. They are assigned routine patrol duties placing them in the position to observe, likely conservative in estimate, hundreds of thousands of motorists during a year. App. pp. 99, 153.

The various statutes, Iowa Code sections 80.22, 321.2(1), 321.2(2), 321.2(3) and 321.3, all relate, at least in some fashion, to the promotion of highway safety. Given their relationship to the same subject matter, it makes sense they be interpreted *in pari materia*. They should be considered together to achieve a cohesive whole and not be deemed mutually exclusive.

Each provision should be "afforded a field of operation." *See Northwestern Bell Tel. Co. v. Hawkeye State Tel. Co.*, 165 N.W.2d 771, 774 (Iowa 1969) (discussing the *in pari materia* doctrine).

Petitioners at page 47 of their brief assert: "When the legislature created the DPS and IDOT, it intended those departments to have separate roles." But this assertion is belied by the facts. First off, if the roles of DPS and DOT were divergent, why does Iowa Code section 321.2(3) mandate both agencies to "cooperate to insure the proper and adequate enforcement of the provisions of this chapter [321]." If two entities are entirely separate, there is no need to "cooperate." Each entity would simply do its own thing.

If it is really "never the twain shall meet" between DPS and DOT, one would expect matters pertaining to commercial vehicle operating authority or registration to be within DOT's exclusive enforcement domain. But DPS, too, conducts commercial enforcement activities regarding the Federal Motor Carrier Safety Assistance Program. This includes driver license checks, equipment inspection, log book inspections and vehicle registration checks. These activities also fall within the domain of DOT's officers. *See* Iowa Code §§ 321.476, 321.477 (2017), and 321.492(1). Hence, there is no exclusivity in the performance of these duties. DPS even maintains ten full-

time inspectors, and approximately 200 part-time inspectors. *See* http://www.dps.state.ia.us/ISP/specialty/mcsap.shtml

Consequently, petitioners' notion of a "no exceptions" separation between the roles of DOT and DPS is incorrect, both factually *and* legally. Say a DOT peace officer *observes* a vehicle speeding in a highway work zone. Can anyone seriously suggest the officer should look the other way and take this position: "It's not my job – leave it to DPS"? Such an attitude cannot be squared with DOT's obligation to "cooperate" with DPS to "insure the proper and adequate" enforcement of chapter 321 under section 321.2(3).

Accordingly, any rational interpretation of these various statutes must, at the very least, conclude DOT's role is a very substantial one in respect to Iowa Code chapter 321 enforcement, especially given the legislature's directive in section 321.3. The roles of DOT and DPS are not mutually exclusive.

## II. DOT'S OFFICERS HAVE AT LEAST THE AUTHORITY UNDER IOWA CODE SECTION 804.9(1) TO MAKE ARRESTS FOR PUBLIC OFFENSES COMMITTED IN THEIR PRESENCE IF IOWA CODE SECTION 321.3 IS TO BE GIVEN ANY MEANING.

Section 321.3, with its vesting of the power in DOT, and its concomitant charging of DOT with a *duty* to enforce Iowa Code chapter 321,

could itself credibly support the conclusion DOT's peace officers are, in fact, fully empowered with general arrest authority.

DOT has taken a limited stance regarding its officers' enforcement authority, consistent with advice it received in 1990 from the Iowa Attorney General. DOT has accepted its officers do not have general arrest powers under Iowa Code section 804.7. It has, however, applied the citizen arrest powers the attorney general said could be invoked. The attorney general believed regardless of any limitations in Iowa Code section 321.477 (1989), DOT officers:

> [M]ay make arrests for OWI if, in the performance of their regular duties, the offense is committed or attempted in the officer's presence, pursuant to the citizen arrest powers of Iowa Code section 804.9 (1989).

1990 WL 484921 *3.

This rationale, as noted in DOT's initial brief, should apply to any offense witnessed by a DOT officer. *State v. Lloyd*, 513 N.W.2d 742, 744-745 (Iowa 1994), noted section 804.9 expanded the common law to extend citizen arrest powers to any "public offense," meaning the authority encompassed any misdemeanor or felony committed in a person's presence.

Petitioners' brief, perhaps attempting understatement, concedes: "The Attorney General does discuss citizen's arrest power as further authorization for OWI enforcement by IDOT officers." Petitioners' brief, p. 32.

Precisely, and petitioners' concession sticks out like a sore thumb. If section 321.477 (2017) limits all authority, including even citizen's arrest authority, why the exception for OWI? The notion of petitioners, as well as the district court, there can be just a "little bit" of citizen's arrest in the form of OWI enforcement is illogical. Either the conduct of DOT officers can result in a valid citizen's arrest or it cannot. If an OWI arrest would be valid by a DOT officer because an OWI was committed in the officer's presence, then an arrest for driving one's vehicle westbound in the eastbound lanes of Interstate 80 is valid when that offense is committed in the officer's presence.

Consequently, if Iowa Code section 321.3 is to be given any meaning, DOT's officers, regardless of any limitations imposed by section 321.477 (2017), have *at least* the authority when an offense is "observed" in their presence under Iowa Code section 804.9. If not, our law has deemed DOT's officers to be something less than a "person" for purposes of the term in section 804.9. If DOT's officers are precluded from acting pursuant to section 804.9(1) upon violations of law they have "observed," what is section 321.3 doing in the Code book? When a statute vests "power" in DOT's director with the edict to enforce chapter 321, it must mean something. The availability of the citizen arrest powers as exercised by

DOT are fully consistent with the "duty" section 321.3 imposes upon DOT to enforce chapter 321.

Petitioners' brief postulates DOT officers running amok patrolling "college bars" to cite people for underage drinking, or cruising the aisles of Wal-Mart looking for shoplifters. Petitioners' brief, p. 38. Nothing in this record indicates DOT officers have been hanging out in campus areas or acquitting their official duties in the shopping lanes of Wal-Mart. Nor did petitioners make such claims in their petitions for declaratory orders. Both petitions assumed the context where officers patrolling the highways acted when an "observed" violation of law was committed by a "motorist." App. pp. 41, 59. Rilea and Riley were not encountered on campus or at Wal-Mart. They were speeding within DOT work zones upon Interstate 35. App. pp. 125, 179.

Unfortunately, the district court, too, failed to properly consider the context in which DOT's officers operate. In their brief, petitioners reference the district court's ruling at footnote 4, App. p. 259, where the court observed:

> A logical extension of IDOT's argument would allow other state agencies to designate employees to make citizen's arrests for traffic violations committed in their presence. Counsel for IDOT stated he did not believe that other agencies could do so. This undercuts IDOT's argument in this case.

But this is what counsel for DOT was asked by the district court at the hearing in this case:

> The Court: So could any state agency, apart from the DOT, assuming it had the funds, set up a *traffic enforcement division* to go out and enforce traffic laws for observed citizens?
>
> DOT Counsel: No. I don't think that's intended under the enabling statutes of the Department of Natural Resources, for example, or the Department of Human Services. That's not part of their mission. The part of the mission of the Department of Transportation, if you take a look at its creation in chapter 307, pertains to the highways, among all the navigation on our streams and aviation as well, but it's primarily highways. And that's part of the reason these officers are on the highway.

Transcript, pp. 51-52, October 6, 2017 hearing (emphasis added).

The district court asked about a "traffic enforcement division." There are, as noted, only two state agencies with statewide "traffic enforcement" divisions for the state's primary highway system: DPS and DOT. No other agencies have that sort of enabling authority to, in the district court's words, "set up a traffic enforcement division." Implicit in the district court's question and ruling, as well as the petitioners' arguments, is a failure to account for DOT's statutory obligations for enforcement of the provisions in Iowa Code chapter 321. *See* Iowa Code §§ 321.2(1), 321.2(3) and 321.3.

Moreover, is it reasonable to think in the face of DOT's enabling authority to hire employees who are "peace officers," its obligation and "power" under section 321.3 to enforce the provisions of chapter 321, its

obligation under section 321.2(3) to "cooperate" with DPS to "insure the proper and adequate enforcement" of chapter 321, and the opinion provided by the Iowa Attorney General concluding citizen's arrests may be perfected for offenses committed in an officer's presence, DOT should instruct its officers to ignore violations of law they have "observed" upon the highways? Petitioners at page 35 of their brief characterize this as engaging in "An *official law enforcement policy* of citizen's arresting." (Emphasis in the original). They contend the "absurdity is self-evident."

Quite the contrary. The absurdity is with petitioners' position. It should be "self-evident" DOT officers possess at least as much authority to act under section 804.9(1) as the South Dakota officer in *State v. Lloyd*, 513 N.W.2d 742 (Iowa 1994). Or, in view of section 321.3, at least as much authority to act upon the primary highway system as a municipal police officer. *See, e.g., State v. Snider*, 522 N.W.2d 815, 818 (Iowa 1994) ("In summary, we hold that a municipal police officer has authority to arrest for state traffic violations anywhere in the state.").[3]

[3]The Court relied upon the definition of peace officer in Iowa Code chapter 801 (1991). However, the Court noted the parties had not raised the citizen's arrest authority under *State v. Lloyd*, suggesting the Court would have been open to reaching the same conclusion on this alternate ground. 522 N.W.2d at 817.

The notion, in the face of Iowa Code section 321.3, DOT should instruct its officers to ignore traffic offenses committed in their presence is the absurdity. Instructing officers they may act while on patrol by stopping vehicles for traffic offenses they have "observed" is a policy consistent with the dictates visited upon DOT by Iowa Code sections 321.2(3) and 321.3. It is consistent with their statewide mission to promote highway safety.

The citizen arrest powers in Iowa Code section 804.9 are not some nefarious means of creating a "huge loophole" as petitioners contend. Instead, citizen's arrest should be viewed as a public safety measure. Public safety is a distinct justification in support of vehicle stops. The Iowa Supreme Court, in relation to the offense of speeding, has held Iowa Code section 321.285 confers "a public safety function" which authorizes vehicle stops. *State v. Moore*, 609 N.W.2d 502, 504 (Iowa 2000). *Moore* was cited several times in DOT's brief, but it, too, was ignored in the petitioners' brief. The Court should conclude petitioners are unable to address this Iowa authority.[4]

[4]Petitioners cite cases pertaining to vehicle stops from Illinois, New York and Ohio, all of which shed no light on Iowa's law. It is puzzling why petitioners look to other jurisdictions, but decline to address Iowa authority like *Moore* and Iowa Code section 321.3. Furthermore, *State v. Lloyd* lays out the controlling Iowa authority addressing vehicle stops by a peace officer as a private person pursuant to Iowa Code section 804.9.

## III. PETITIONERS IGNORE AUTHORITY CITED BY DOT AUTHORIZING ITS OFFICERS TO ARREST WHEN OFFENSES ARE COMMITTED IN THEIR PRESENCE.

Petitioners' approach, in large measure, is to suggest they should prevail based upon articles cited from the Des Moines Register, as well as selective comments made by a small group of Iowa legislators. They take the position, as did the district court, citizen's arrest is not available to DOT. Their main authority is *Merchants Motor Freight v. Iowa State Highway Commission,* 239 Iowa 888, 32 N.W.2d 773 (1948).

Petitioners assume an ostrich-like position when confronted with argument and authority refuting their position. This is revelatory of the weakness of their position. If, in fact, DOT officers, when lacking general arrest authority, are not in the position of a "private person" for purposes of Iowa Code section 804.9(1), it means their conduct *can never* result in a valid citizen's arrest. The negative ramifications for public safety if that is Iowa's law must be carefully considered. It is why in its initial brief DOT set forth a series of hypothetical scenarios which assumed DOT officers had "observed" a series of public offenses – everything from a speeding vehicle to a shooting to a child being molested and more. *See* DOT's initial brief, pp. 19-20.

Petitioners offer no reply to these scenarios, all of which are based upon a DOT officer having "observed" violations of law having nothing to do with offenses "relating to operating authority, registration, size, weight, and load." In each instance, under petitioners' position and that of the district court, DOT's officers are prohibited from interceding by arrest even though the offenses occurred in the officer's presence.

The law is serious business. It is not a mere abstraction for law school debate, but instead the rules of behavior the civilized society adopts to promote the public welfare. If the authority in Iowa Code section 804.9 is going to be precluded from use by DOT officers when they witness crimes in their presence, it is incumbent to consider how very serious such a conclusion could be to the public order. It is, in fact, necessary to "consider fact patterns other than the one before the court to determine if a particular statutory interpretation would have untoward consequences." *Iowa Ins. v. Core Group, Iowa Justice Ass'n*, 867 N.W.2d 58, 75 (Iowa 2015). Petitioners refuse to do so.

Petitioners cite *Merchants Motor Freight*, positing four reasons they say it governs and *State v. Lloyd* does not. Those reasons are (1) the South Dakota officer had police authority in that state when he first began following Lloyd's car, (2) *Lloyd* did not involve "an official law

enforcement policy of citizen's arresting to avoid statutory restrictions on power," (3) *Lloyd* "never confronted" Iowa Code sections 80.22 and 804.24, and (4) "*Lloyd* does not govern because *Merchants Motor* does." *See generally* petitioners' brief pp. 40-45. These arguments were refuted in DOT's initial brief.

Lloyd was not stopped in South Dakota; he was stopped in Iowa. Once the South Dakota officer entered Iowa he had no more arrest authority than a private person. It was Iowa's citizen's arrest statute, and nothing else, validating the stop and citation issuance. Similarly, if a DOT peace officer lacks official authority as a DOT officer to stop a motorist, the DOT officer, like the officer in *Lloyd*, has authority as a "private person" to arrest. *See also State v. O'Kelly*, 211 N.W.2d 589, 595 (Iowa 1973), *cert. denied*, 417 U.S. 936, 94 S.Ct. 2652, 41 L.Ed.2d 240 (1974) (peace officer without official authority treated as a "private person"). Consequently, it is immaterial where the South Dakota officer first began following Lloyd.

Nor is citizen's arrest a means of "avoiding statutory restrictions on power." An arrest validated by Iowa Code section 804.9(1) is the legitimate exercise of a statutory power. The petitioners, after an apparent epiphany on the subject, concede OWI arrests may be made pursuant to the citizen arrest power. Why isn't that, to use petitioners' construct, avoidance of a statutory

restriction on power? Their notion of an "official" policy is simply a reiteration of the *Merchants Motor Freight* analysis which upheld citizen's arrest if the officers acted in an individual capacity but not if they acted "officially." 239 Iowa at 893, 32 N.W.2d at 776. Petitioners explicitly repeat that argument in their brief at page 40 noting "*Merchants Motor* rejected citizen's arrest because … IDOT employees were acting in an official capacity …."

Petitioners, therefore, refuse to acknowledge the law's change from 1948. It no longer matters whether the officer purports to act officially in making a citizen's arrest, and it is immaterial if the officer is acting within the "limits" of the officer's designation. The Iowa Supreme Court made this clear in *Lloyd*. 513 N.W.2d at 745. The Court approvingly cited to Restatement (Second) of Torts § 121, comment d. DOT referenced the Restatement extensively in its initial brief but petitioners never addressed it.

The short answer to the claim *Lloyd* "never confronted" Iowa Code sections 80.22 or 804.24 is: There was no need for it. The decision in *Lloyd* dealt with the separate arrest authority in Iowa Code section 804.9(1), a statutory authorization available to all persons, including peace officers. Section 80.22 pertains to strictures on entities beyond DPS employing officers to enforce provisions "specifically reserved by 1939 Iowa Acts, ch.

120." Section 804.9 represents an independent provision of law not contained within the reservation in 1939 Iowa Acts, ch. 120. Furthermore, the notion of some immutable wall between DPS and DOT is belied by Iowa Code section 321.2(3).

Petitioners' argument DOT is violating section 804.24 is also without merit. That statute's discussion about presenting an arrested subject before a magistrate has no relevance when the citation procedure authorized in Iowa Code chapter 805 is used. It frankly defies comprehension why petitioners make such a claim in the face of its rejection in *Lloyd*. DOT noted in its initial brief *Lloyd* had *rejected* the assertion "no valid citizen's arrest could have occurred because officer Sandage only issued him a citation and a warning." 513 N.W.2d at 743. Plus, petitioners' argument is pregnant with the admission DOT officers, in fact, have citizen arrest powers to make arrests; instead, petitioners are merely squabbling about procedure, *i.e.*, was the arrestee taken before a magistrate pursuant to section 804.24. But as noted, petitioners' argument is without relevance. Their petitions for declaratory orders were premised upon the notion the motorists were receiving citations. App. pp. 41, 59.

Petitioners' brief is a Johnny-one-note. They have hitched their wagon to *Merchants Motor Freight* as if time stopped in 1948. They even

summarize at page 40 of their brief why *Merchants Motor Freight* rejected the citizen's arrest doctrine:

> (1) IDOT employees were acting in an official capacity pursuant to an official policy – not as private citizens; (2) the IDOT employees do not arrest or threaten arrests, which is the only thing authorized by the citizen's arrest statute; and (3) IDOT employees are issuing citations, which are not authorized by the citizen's arrest statute.

Points two and three are really the same thing. And yes, *Merchants Motor Freight* reached these conclusions as summarized by petitioners. But no, those conclusions do not reflect today's law. *Lloyd* and Restatement (Second) of Torts § 121, comment d, could not be clearer: It is immaterial in perfecting a citizen's arrest whether the officer is acting in an official capacity. That is why the attorney general noted citizen's arrests for OWI could be perfected by DOT's officers "in the performance of their regular duties." 1990 WL 484921 *3. The argument over citations has been thoroughly addressed. *Lloyd* permits the use of citations when an officer is acting under Iowa Code section 804.9. Indeed, petitioner' brief is inconsistent on this point. They relentlessly cling to this argument; yet, at page 43 of their brief, they concede in relation to *Lloyd*: "The Iowa Supreme Court held that the South Dakota officer's restraint of the defendant was valid as a citizen's arrest even though the officer did not ultimately arrest the

defendant." Exactly, but that is because the officer used the citation process *Lloyd* gave its blessing upon.

Therefore, petitioners have failed to address countervailing authority noting very substantial differences between the jurisprudence of 1948 and 2017. They even make the unfounded claim *Merchants Motor Freight* was reaffirmed in 1987 by the Iowa Supreme Court. Petitioners' brief, p. 30. The case they rely upon, *State v. A-1 Disposal*, 415 N.W.2d 595 (Iowa 1987), did no such thing. *Merchants Motor Freight* is never even cited in *A-1 Disposal*.

*A-1 Disposal* precedes *State v. Lloyd* by seven years. The case, unlike Lloyd, never addressed issues under Iowa Code section 804.9(1) pertaining to a peace officer's authority as a "private person" to act upon traffic offenses committed in the officer's presence. *A-1 Disposal*, in fact, extended broad authority to DOT to make stops of trucks subject to regulation regardless of whether DOT implemented checkpoint protocols typically required of passenger cars. If anything, *A-1 Disposal* implies very broad enforcement authority on DOT's part. *See also City of Cedar Rapids v. State*, 478 N.W.2d 602, 605 (Iowa 1991) (in the context of a weight enforcement case DOT officers said to have enforcement authority to "ticket

city vehicles for *state law violations within the city*, including overload violations") (emphasis added).

But in any event, *A-1 Disposal* made clear it was not closing the door on other vehicle stops which might be permitted under other statutes: "We defer until a later time decisions concerning validity of stops that may occur *in other factual and legal contexts than the ones present here.*" 415 N.W.2d at 601. (Emphasis added). Therefore, *A-1 Disposal* is not controlling within the context of a DOT peace officer who witnesses vehicles, like Rilea's and Riley's, speeding through a road work zone for which DOT has oversight responsibility.

The latter point is particularly significant given DOT's charge mandated by Iowa Code section 321.3 for "enforcing" the provisions of Iowa Code chapter 321. DOT has jurisdiction and control over the primary highway system. Iowa Code § 306.4(1). The legislature has granted DOT supervisory authority over highway work zones. *See* Iowa Code § 313.12. Substantially increased fines for speeding are imposed in road work zones. *See* Iowa Code § 805.8A(14)(i). DOT, under Iowa Code section 321.253(2), is tasked with responsibility for erecting signs informing motorists of the increased penalties for road work zone traffic violations. The signs DOT erects define the beginning and ending of the work zone. *See* Iowa Code §

321.1(66) ("Road work zone" defined). Couple this with the broad authority conferred on DOT in Iowa Code section 321.3, and it defies common sense to think DOT's peace officers cannot stop motorists speeding in such areas before an officer, who is, after all, a certified peace officer under Iowa law. *See* Iowa Code §§ 321.1(50), 321J.1(8)(e) and 801.4(11)(h).

This presents another point disregarded by petitioners. The highway commission officers were not peace officers in 1948 as noted in *Merchants Motor Freight*. 239 Iowa at 892-93; 32 N.W.2d at 776. On page 34 of their brief petitioners offer this puzzling assertion: "The definition of 'peace officer' in Iowa Code § 321.1 also remains materially unchanged from the time of *Merchants Motor*." That is untrue. Today, for purposes of chapter 321, the term "Peace officer" means "every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations *in addition to its meaning in section 801.4*." Iowa Code § 321.1(50) (emphasis added). Iowa Code section 801.4(11)(h) explicitly designates DOT's officers as "Peace officers." Therefore, today's meaning of "Peace officer" in chapter 321 includes DOT's officers, unlike the highway commission officers in 1948.

DOT has taken the position, consistent with the advice from the attorney general in 1990, its officers do not have "general arrest" powers

under Iowa Code section 804.7. Nonetheless, it strains credulity to think that means these same officers are to stand down when they witness violations of the law in their presence. The attorney general certainly did not think so. That is why his opinion affirmed they had citizen arrest powers during their duties to act upon an offense committed in their presence.

Petitioners contend the analysis must always circle back to section 321.477 (2017), meaning the DOT officers must be limited to enforcing only those offenses enumerated in that statute, notwithstanding their present-day status as peace officers. If that is the analysis, then the hypothetical DOT offered in its initial brief about petitioners' position and school bus safety achieves an absurd result. *See Metier v. Cooper Transport Co., Inc.*, 378 N.W.2d 907, 913 (Iowa 1985) (courts should avoid interpretations of statutes rendering the provisions absurd or impractical). This would mean, notwithstanding the command to *all* Iowa peace officers to enforce the "*Keep Aware Driving – Youth Need School Safety Act*" in Iowa Code section 321.372, DOT officers would be excluded from doing so even when they witnessed a violation. *See* Iowa Code § 321.380 ("It shall be the duty of all peace officers and of the state patrol" to enforce the Act). That is an absurd result detrimental to Iowa's school children, clearly contrary to the

legislature's inclusion of the DOT officers as peace officers in Iowa Code chapter 321.

The school bus scenario struck a chord with petitioners. They do not dispute in their brief what DOT has said is the result of their interpretation. Petitioners' only response is relegated to their footnote 5 where they state: "Petitioners do not agree that IDOT employees have authority to enforce school bus safety laws." But what sense does that make when petitioners concede the officers are peace officers? Iowa Code section 321.380 references "all" peace officers. Perhaps realizing this, petitioners in footnote 5 engage in a rhetorical bob and weave contending: "The district court did not address whether the IDOT has the authority to enforce school bus safety laws." But that is not true, either.

DOT's declaratory orders held its officers had explicit authority to act under the *Keep Aware Driving – Youth Need School Safety Act*. App. pp. 118, 172. The district court, however, on page one of its ruling held: "The court concludes that IDOT's declaratory orders are erroneous and should be reversed." App. p. 252. The district court at page 14 of its ruling likewise held:

> The court grants a declaratory ruling that prior to the effective date of the 2017 amendment to Iowa Code Section (*sic*) 321.477, IDOT MVE officers lacked authority to stop drivers or

> to issue citations for violations unrelated to operating authority, registration, size, weight, and load.

(footnote pertaining to limited exceptions the court preserved for OWI and assistance to other officers omitted); App. p. 265. Therefore, the district court ruled against DOT on this issue as it did all others.

The *Keep Aware Driving – Youth Need School Safety Act* is not included within the offenses listed in section 321.477 (2017). Therefore, if this Court adopts petitioners' view, a motorist can illegally pull around a stopped school bus with its stop arm and red flashing warning lamps activated in the presence of a DOT officer, but the officer has no authority to stop the law violator. This result might be in keeping with *Merchants Motor Freight* but it is entirely inconsistent with today's status of the DOT officers as peace officers. Petitioners do not want to concede the school bus scenario because they do not recognize DOT's officers as falling within the definition of "Peace officer" in Iowa Code section 321.1(50). It upsets their unyielding reliance upon the law of 1948 in *Merchants Motor Freight*.

## IV. THE LEGISLATURE'S RECENT AMENDMENT CONFIRMS DOT'S AUTHORITY TO MAKE ARRESTS FOR OFFENSES COMMITTED IN THE PRESENCE OF A DOT OFFICER.

Petitioners' brief notes a new subsection was added when section 321.477 (2017) was amended. They quote the new subsection at page 49 of

their brief. The subsection is found in section 321.477(4) (as amended). DOT referenced the same subsection in its initial brief. Section 321.477 (as amended) does grant DOT peace officers powers to enforce "all laws of this state," *see* Iowa Code § 321.477(1) (as amended), but limits those "general powers" within cities. *See* Iowa Code § 321.477(3) (as amended). The "new subsection" petitioners quote, however, makes clear, despite the limitations imposed on general powers within cities, nothing in the statute shall be construed as a limitation "when a public offense is being committed in their presence." This is a clear endorsement of the citizen's arrest power.

Nor does the amendment suggest citizen's arrest power did not exist prior to the amendment. The amendment did not create authority to make citizen's arrests. That authority was already in place courtesy of Iowa Code section 804.9. The amendment simply says its limitation shall not be construed as a limitation "on the power" to act "when a public offense is being committed in their presence." Iowa Code § 321.477(4) (as amended). If there was not already the "power," there would be no need to indicate the amendment should not be interpreted as a limitation upon the preexisting power.

Curiously, since they quote section 321.477(4) (as amended), petitioners offer no explanation why this subsection is anything other than an

express legislative directive making it clear with respect to those areas where limitations on "general powers" were preserved, the legislature intended DOT's officers to continue with their existing citizen arrest authority.

Petitioners are incorrect in suggesting a legislative amendment can never be interpreted as clarifying the law. This Court has recognized the "time and circumstances" of an amendment may, in fact, "indicate that the legislature merely intended to clarify the intent of the original enactment." *Tiano v. Palmer*, 621 N.W.2d 420, 423 (Iowa 2001). Petitioner's exhibit 3, App. pp. 221-225, discusses the reason for the legislative amendment. In fact, the amendment came about as a "legislative proposal" from DOT. It was discussed in petitioners' exhibit 3, which was an "Overview of 2017 Omnibus Bill," with DOT's initial proposal labelled "*Clarification of authority* extended to Iowa DOT employees designated as peace officers." (Emphasis added); App. p. 220.

Therefore, DOT was proposing legislation intended to offer clarification. There was concern petitioners were seeking to enjoin DOT from conducting critical enforcement activities. App. pp. 221-225. DOT, too, was cognizant petitioners were seeking to pursue a large dollar class action suit as indicated at pages 12 and 13 of their brief by their reference to the action in Polk County docketed as CVCV053051. DOT concluded the

legislative amendment was needed to "clarify and confirm that MVE officers have *the authority they have long exercised* in the interest of public welfare and safety." App. p. 223 (emphasis added).

Thus, as noted in DOT's initial brief, though the amendment certainly achieved a material change in the law by expanding DOT officers' general arrest powers, it also made clear in those areas where general arrest authority was not extended, DOT's officers continued to possess citizen arrest authority for any public offense "being committed in their presence." The amendment confirms what was the legislative intent both prior to and after the amendment, *i.e.*, DOT's officers would continue to possess the citizen arrest empowerment they always had.

## V. PETITIONERS' INAPPROPRIATE USE OF NEWSPAPER ARTICLES AND LEGISLATIVE FLOOR DEBATES.

The petitioners ignore what the amendment to section 321.477 (2017), and specifically the preservation of citizen's arrest power to DOT officers in section 321.477(4) (as amended), means. Their exhibit 3 discussed, and the language of the amendment makes clear, DOT was seeking, in part, clarification and confirmation of its long-standing exercise of citizen arrest power. *See also* petitioners' exhibit 11 (DOT memorandum noting DOT

officer enforcement authority for offenses "committed in their presence when necessary to protect the public"). App. p. 247.

Instead, petitioners have essentially decided to plead their case through the newspaper. Footnotes 13 and 14 of their brief cite articles in the Des Moines Register as appellate authority. This includes stories in which petitioners' counsel is quoted. Bottom line: newspaper articles are not legal authority. *See, e.g., Horse v. Kirkgard*, 2014 WL 5365245 (D. Montana 2014) *2 ("Newspaper articles are not legal authority, neither binding nor persuasive."). The writers of these articles were not witnesses in the district court. The characterizations regarding DOT's ticket issuances are not the product of sworn testimony. There was no opportunity for cross-examination. Newspaper articles normally are not received as evidence because their contents constitute impermissible hearsay. *Jacobson v. Benson Motors, Inc.*, 216 N.W.2d 396, 399-400 (Iowa 1974).

The newspaper has been cited in opinions of this Court to illustrate statistical information or societal trends or awareness. *See, e.g., State v. Plain*, 898 N.W.2d 801, 826 (Iowa 2017) (referencing statistics on African-American arrest and incarceration rates). But that is not what petitioners are doing. They are, instead, citing the articles as legal authority where the sole issue in this case is a legal question about DOT's authority. Nor does the

quote petitioners offer from Sutherland stand as an endorsement of newspaper articles as legal authority. This Court's opinions have never countenanced the receipt of newspaper articles as competent evidence concerning the meaning to be accorded Iowa statutes.

Statutory interpretation should be focused upon what the legislature as a body passes and the Governor signs into law. This is where petitioners go awry with their selective use of quotes from these legislators: Baudler, Breitbach, Danielson, Gaskill, Johnson and Taylor. This small group is not the Iowa legislature. What they may have said in a floor debate is not the law. Moreover, if as petitioners seem to imply, the legislature was so incensed with DOT and its use of citizen's arrest power, why would the legislature pass an amendment that in Iowa Code section 321.477(4) (as amended) preserves citizen's arrest authority for these officers? The legislature, at DOT's urging, made clear citizen's arrest was a preexisting power it did not wish disturbed. This interpretation of the amendment as affording clarification concerning the long-standing existence of DOT officer citizen arrest authority is consistent with *Tiano v. Palmer*, 621 N.W.2d 420, 423 (Iowa 2001).

Petitioners' citations to individual legislators should be measured against the instruction offered in *Iowa State Education Association v. Public Employment Relations Board*, 269 N.W.2d 446, 448 (Iowa 1978):

> At first blush it might seem reasonable to rely upon an individual legislator's opinion of legislative intent. But we believe such testimony is generally unpersuasive.
>
> The legislative process is a complex one. A statute is often, perhaps generally, a consensus expression of conflicting private views. Those views are often subjective. A legislator can testify with authority only as to his own understanding of the words in question. What impelled another legislator to vote for the wording is apt to be unfathomable.
>
> Accordingly, we are usually unwilling to rely upon the interpretations of individual legislators for statutory meaning. This unwillingness exists even where, as here, the legislators who testify are knowledgeable and entitled to our respect. See generally 2A Sutherland Statutory Construction, § 48:16, p. 222 (Fourth Ed. 1973).

Petitioners offer this material as legal conclusions. For instance, at page 50 of the brief, Representative Baudler is quoted: "They're using [the authority] but they don't have it." At page 51 of the brief, Representative Gaskill is quoted saying "I think it was illegal and it was wrong for them to do the behavior that they'd already done …." This is akin to calling a witness at trial and asking the witness if he or she has an opinion whether a specific undertaking was "legal." Such a question would be properly objected to as calling for a legal conclusion. It is no more appropriate to

offer this form of "testimony" simply because it was uttered on the floor of the legislature. The matter referenced by petitioners from the newspapers, and the legal conclusions offered in their brief from certain legislators, is improper. It should not be considered. In fact, it should be ordered stricken.

## CONCLUSION

The district court's ruling should not stand. It nullifies citizen's arrest for DOT officers. The district court's ruling conflicts with the grant of DOT authority in Iowa Code section 321.3, as well as the citizen arrest powers in Iowa Code section 804.9 as articulated in *Lloyd* and Restatement (Second) of Torts, § 121, comment d. Reversal of the district court will much better serve the interest of public safety.

## REQUEST FOR ORAL ARGUMENT

DOT renews its requests to be heard in oral argument.

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## CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Brief contains 6,789 words, as allowed by Court order, excluding the parts of the Brief exempted by Iowa R. App. p. 6.903(1)(g)(1).

This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in size 14 Times New Roman.

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## CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

We, David S. Gorham, Robin G. Formaker and Richard E. Mull, hereby certify that on April 5, 2018, a copy of Appellant's Reply Brief was filed electronically with the Clerk of the Iowa Supreme Court through the EDMS system, and which system further will provide access and service to the brief on that same date to:

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