

**IN THE SUPREME COURT FOR THE STATE OF IOWA  
NO. 17-1803**

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**RICKIE RILEA AND TIMOTHY RILEY,  
Petitioners-Appellees**

**vs.**

**IOWA DEPARTMENT OF TRANSPORTATION,  
Defendant-Appellant.**

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**APPEAL FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY,  
HONORABLE ELIZA OVROM**

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**PETITIONERS-APPELLEES' BRIEF AND  
REQUEST FOR ORAL ARGUMENT**

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## STATEMENT OF ISSUES

- I. The Iowa Code (1939 through May 11, 2017) does not authorize IDOT employees to stop motor vehicles for the purpose of enforcing traffic laws beyond those laws relating to operating authority, registration, size, weight, and load.**

Iowa Code T. XIII, Ch. 238, § 4626 (1939)

Iowa Code § 80.22 (1946)

Iowa Code § 80.22 (2016)

Iowa Code § 321.1 (2016)

Iowa Code § 321.1 (1946)

Iowa Code § 321.2 (1946)

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Iowa Code § 748.3 (1946)

Iowa Code § 801.4 (2016)

Iowa Code § 804.7 (2016)

H.F. 463, 87 G.A. (Iowa 2017)

47th G.A. 134 § 2, 14 (Iowa 1937)

48th G.A. 121 § 7 (Iowa 1939)

48th G.A. 120 §§ 4, 8, 95 (Iowa 1939)

49th G.A. 177 §§ 1, 2 (Iowa 1941)

50th G.A. 164 § 4 (Iowa 1943)

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54th G.A. 458 § 2 (Iowa 1951)

H.F. 458, 54th G.A. (Iowa 1951)

65th G.A. 1180 §§ 2, 27 (Iowa 1974)

65th G.A. 1180 §§ 101, 107 (Iowa 1974)

*Merchants Motor Freight v. State Highway Comm'n*, 239 Iowa 888 (1948)

*State v. A-1 Disposal*, 415 N.W.2d 595 (Iowa 1987)

*Petition of Chapman*, 890 N.W.2d 853 (Iowa 2017)

1990 Iowa Op. Att’y Gen. 100, 1990 WL 484921 (1990)

**II. Iowa Code chapter 804 does not authorize the IDOT policy of motor vehicles for the purpose of enforcing traffic laws beyond those laws relating to operating authority, registration, size, weight, and load.**

Iowa Code § 80.22 (2016)  
Iowa Code § 321.2 (2016)  
Iowa Code § 321.433 (2016)  
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*Merchants Motor Freight v. State Highway Comm'n*, 239 Iowa 888 (1948)  
*People v. Lahr*, 147 Ill. 2d 379, 383 (1992)  
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Senator Danielson, Iowa Senate public comment on House File 473 at 11:08:35 (April 21, 2017), *available at* <http://www.legis.state.ia.us/dashboard?view=video&chamber=S&clip=s20170421085655450&dt=2017-04-21&offset=7737&bill=HF%20463&status=r>

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2A Sutherland Statutory Construction § 48:4 (7th ed.)

## ROUTING STATEMENT

Whether IDOT peace officers are cabined by Iowa Code § 321.477<sup>1</sup> and allowed only to enforce “laws relating to the operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier’s interstate transportation service with the department” is a question that has been confronting and dividing district courts across the state for over a year. With the exception of this case, the challenges to the IDOT’s authority arose in the context of criminal cases charged by IDOT officers.<sup>2</sup> This case is unique because it is an offshoot of the class action challenging the IDOT’s policy of acting outside the scope of § 321.477. Petitioners sought a declaratory ruling from the IDOT regarding the legality of the IDOT’s policy and appealed when the IDOT concluded its policy was permissible. The district court then ruled the IDOT’s policy of enforcing laws outside the scope of §321.477 was illegal.

Although the Iowa Supreme Court ruled in *Merchants Motor Freight v. State Highway Comm’n*, 239 Iowa 888 (1948) that Iowa Code § 321.477 is

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<sup>1</sup> The Iowa legislature amended Iowa Code § 321.477 effective May 11, 2017. Unless otherwise noted, this brief’s citation to Iowa Code § 321.477 refers to the law as it existed prior to the May 11, 2017 amendment.

<sup>2</sup> One of these criminal cases, *State v. Werner*, Sup. Ct. No. 17-1232, is currently pending on appeal and presents a similar question regarding the IDOT’s enforcement authority.

a limit to enforcement authority, the IDOT now advances arguments for why *Merchants Motor* does not control the outcome of this case. The Iowa Supreme Court should retain this appeal to consider whether those arguments warrant deviating from the *Merchants Motor* holding. Iowa R. App. P. 6.1101(2)(f). The resolution of this issue will impact the validity of thousands of citations issued by IDOT employees and will determine if the class action against the IDOT may proceed. Iowa R. App. P. 6.1101(2)(c), (d).

### **CASE STATEMENT**

Petitioners are parties to Polk County District Court Case No. CVCV053051. (App 6). In that case, Petitioner Rilea, Petitioner Riley, and Rebecca Pitts, on behalf of all those similarly situated, sought a declaratory judgment and injunction. (App. 6, 253). Specifically, Plaintiffs in CVCV053051 sought an order declaring that the authority of the Iowa Department of Transportation (IDOT) is limited as set forth in Iowa Code § 321.477 (2016) and enjoining the IDOT from acting beyond that authority. Iowa Code § 321.477 grants the IDOT enforcement authority with respect to operating authority, registration, size, weight, and load of motor vehicles. Plaintiffs also pled an unjust enrichment claim. (App. 6, 23–26).

On March 20, 2017, the district court ruled that Plaintiffs in CVCV053051 were required to exhaust their remedies by filing a request for

declaratory order with the IDOT. (App. 32–34, 253). The district court thus dismissed Plaintiffs’ declaratory and injunctive relief claims. (App. 34, 253). After finding sovereign immunity inapplicable to Plaintiffs’ unjust enrichment claim, the district court stayed Plaintiffs’ claim for unjust enrichment pending the exhaustion of the declaratory and injunctive relief claims. (App. 38).

Petitioners Rilea and Riley consequently each filed a Petition for Declaratory Order with the IDOT. (App. 40) (Rilea); (App. 58 (Riley)).<sup>3</sup> Petitioners alleged “the IDOT has maintained an internal policy whereby [Motor Vehicle Enforcement] patrol officers are directed to stop and detain any motorist observed violating any Iowa law and issue citations to those motorists.” (App. 41, 59). Petitioners sought rulings from the IDOT declaring that its authority is limited as set forth in Iowa Code § 321.477. They further requested the IDOT to direct its employees to cease detaining drivers and writing citations for violations unrelated to operating authority, registration, size, weight, and load.

On April 26, 2017, the IDOT concluded in both IDOT Docket Nos. DO-MV-17-1 and DO-MV-17-2 that it “does have the legal authority to stop

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<sup>3</sup> The two petitions filed by Rilea and Riley are identical in all material aspects.

drivers for violations of law unrelated to operating authority, registration, size, weight, and load, and DOT may issue citations for violations of law unrelated to operating authority, registration, size, weight, and load.” (App. 77 and App. 131 [hereinafter IDOT Rulings]).<sup>4</sup> The IDOT acknowledged that it does not have “general arrest authority” but opined that IDOT employees are capable of enforcing Iowa Code violations via citizen’s arrest power. *See id.* at 78–79, 110–11, 132–33, 164–65. The IDOT thus declined to direct its employees to cease detaining drivers and writing citations for violations unrelated to operating authority, registration, size, weight, and load.

Petitioners Rilea and Riley subsequently sought judicial review, (App. 184, 189), and the district court consolidated their judicial review actions. After briefing and a hearing, the district court concluded the IDOT lacked statutory authority to stop drivers or issue citations for violations of law unrelated to operating authority, registration, size, weight, and load.<sup>5</sup> (App.

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<sup>4</sup> The two IDOT Rulings are identical in all material aspects.

<sup>5</sup> The district court and the parties acknowledged that there are limited exceptions authorizing IDOT enforcement beyond the scope of § 321.477. Iowa Code § 321J.1(8)(e) would allow an IDOT employee to enforce the provisions of chapter 321J if the officer satisfactorily completed a particular training course. Iowa Code § 804.17 would allow an IDOT employee to assist “[a]ny peace officer making a legal arrest” if requested by that peace officer. (App 265; 7/31/17 Pet. Brief at 20–21). Petitioners do not agree that IDOT employees have authority to enforce school bus safety laws. (9/15/17 Pet.

265). The district court reversed the IDOT Rulings as erroneous interpretations of statute. (App. 265). The IDOT has now appealed.

### **FACTS**

A petition for declaratory order seeks guidance regarding “how the department will apply a statute, rule or order *based on a specific set of facts contained in the petition.*” 761 Iowa Admin. Code 12.1 (emphasis added). Petitioners alleged facts in their respective petitions for declaratory order but the IDOT did not hold a hearing where Petitioners could present evidence. *See* 761 Iowa Admin. Code 12 (administrative process provides no opportunity for factual development). The IDOT Rulings do not set forth a statement of facts, but apparently incorporate the facts pled by Petitioners. (*See* App. 77, 131) (“Yes, *under the circumstances as frame by petitioner in his petition for declaratory order, DOT does have the legal authority to stop drivers . . . .*” (emphasis in original)). Petitioners did, however, present evidence to the district court. *See* Iowa Code § 17A.19(7) (in reviewing agency action, district court “may hear and consider such evidence as it deems appropriate”; *see also* Iowa Code § 17A.2 (defining “agency action” to include statements of law or policy, orders, and decisions)). The following facts were alleged in Rilea and

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Reply at 5). The district court did not address whether the IDOT has the authority to enforce school bus safety laws.

Riley’s respective Petitions and substantiated by exhibits admitted by the district court.

The IDOT Office of Motor Vehicle Enforcement (“MVE Office”) manages a fleet of vehicles and a staff of patrol officers. (App. 41, 59). Open records requests reveal that IDOT employees have stopped thousands of drivers and written thousands of citations in recent years for violations unrelated to operating authority, registration, size, weight, and load. Petitioners Rilea and Riley both received such a citation. (App 41, 59).<sup>6</sup>

For approximately the past two or more years, the IDOT has maintained an internal policy whereby MVE patrol officers are directed to stop and detain any motorist observed violating any Iowa law and issue citations to those motorists. (App. 41,59; district ct. Ex 13<sup>7</sup>); *see also* Senator Danielson, Iowa

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<sup>6</sup> The IDOT indeed may have been enforcing laws unrelated to operating authority, registration, size, weight, and load since the 1970s. (*See* district ct. Ex 8 at 2).

<sup>7</sup> IDOT MVE Officer Robert Wittkowski provided sworn testimony in an unrelated action stating that, when he was hired, “our policy on a non-commercial traffic was to stop them if...we had a speed violation that was 25 miles per hour or greater over the speed limit.” MVE Officer Wittkowski confirmed the policy to stop non-commercial motorists exceeding the posted speed limit by 25 m.p.h. or more was the Motor Vehicle Enforcement’s Policy. (district ct. Ex 13). MVE Officer Wittkowski further testified this policy has changed since he was hired. Officer Wittkowski testified “The policy is now is there is no restriction on speed violation for a non-commercial motor vehicle stop.” *Id.* Officer Wittkowski testified this change in policy



Senate public comment on House File 473 at 03:41:25 (April 4, 2017) (“Director Trombino . . . a few years ago directed his motor vehicle enforcement officers to do more noncommercial traffic enforcement. Some speculate that there was an internal memo; some say there was no internal memo. But, the facts are pretty clear. They are writing more noncommercial tickets.”).<sup>8</sup> Prior to adopting a policy allowing MVE employees to execute traffic stops on any motorist observed violating any Iowa law, the IDOT maintained a policy directing MVE Office patrol officers to pull over any motorist driving more than 25 miles per hour over the speed limit. (App. 41, 59; App. 249; district ct. Ex 13).

Between August 19, 2014, and August 19, 2016, MVE employees wrote at least 12,840 citations unrelated to operating authority, registration, size, weight, and load to motorists driving non-commercial motor vehicles. (App. 41, 59). Between August 19, 2014, and August 19, 2016, MVE employees wrote an additional 9,400 citations unrelated to operating authority, registration, size, weight, and load to motorists driving commercial

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occurred roughly a couple of years prior to his testimony on August 5, 2016. *Id.*

<sup>8</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=S&clip=s20170404144554820&dt=2017-04-04&offset=2739&bill=HF%20463&status=r>.

motor vehicles. (App. 41,59). IDOT employees continued after August 19, 2016 to stop motorists and issue citations for violations unrelated to operating authority, registration, size, weight, and load. (App. 41, 59).

MVE employees utilize State-issued and owned radar detectors to gain access to evidence that motorists are violating Iowa laws unrelated to operating authority, registration, size, weight, and load. (App. 42, 60). MVE employees utilize state-owned MVE vehicles, overhead flashing lights, and sirens to effectuate traffic stops for violations unrelated to operating authority, registration, size, weight, and load. (App. 42, 60). MVE employees represent to motorists that they possess the authority as State employees to detain individuals and issue citations for violations unrelated to operating authority, registration, size, weight, and load. (App. 42, 60).

IDOT employees are acting in their official capacities as officers of the IDOT when they issue citations. (App. 42, 60). IDOT employees do not take motorists before a magistrate or deliver the motorists to a peace officer and accompany the peace officer before the magistrate following a detention or arrest of the motorists. (App. 42, 60).

### **PRESERVATION & STANDARD OF REVIEW**

Whether the IDOT's policy of enforcing laws outside the scope of Iowa Code § 321.477 is illegal was squarely presented to the IDOT in Petitioners'

requests for a declaratory order and to the district court. Both the IDOT and the district court ruled on this issue; it is preserved.

“Iowa Code section 17A.19(10) governs judicial review of an agency ruling. The district court reviews the agency’s decision in an appellate capacity.” *Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199, 207 (Iowa 2014) (internal citations omitted). An appellate court likewise applies the standards found in § 17A.19(10). *Id.* In this case, the IDOT has interpreted various statutes in its analysis of the scope of its authority. Among those statutes are Iowa Code § 321.477 and the provisions of Iowa Code chapter 804. Petitioners assert IDOT has erroneously interpreted those provisions, calling for review under Iowa Code § 17A.19(10)(c). Under § 17A.19(10)(c), an appellate court may reverse an agency decision if it is “[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.”

The IDOT is not vested with discretion to interpret the code sections involved in this case. *See, e.g., Watson v. Iowa Dep't of Transp. Motor Vehicle Div.*, 829 N.W.2d 566, 568 (Iowa 2013) (holding IDOT was not vested with authority to interpret Iowa Code § 321.208(1)(a)); *Welch v. Iowa Dep't of Transp., Motor Vehicle Div.*, 801 N.W.2d 590, 594 (Iowa 2011) (holding IDOT was not vested with authority to interpret Iowa Code § 321J.9); *Lee v.*

*Iowa Dep't of Transp., Motor Vehicle Div.*, 693 N.W.2d 342, 344 (Iowa 2005) (holding IDOT was not vested with authority to interpret Iowa Code § 321J.12). The interpretation of Iowa Code § 321.477 implicates several definitions found in other statutes. Iowa Code §§ 80.1A, 80.15, 97A.1, 321.1(50); 804.11(c); 801.4(11)(h) (defining peace officer). When the legislature has defined relevant terms, this indicates the agency does not have interpretive authority. *See Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199, 208 (Iowa 2014). The interpretation of the § 321.477 also implicates statutes outside of chapter 321 (motor vehicles and the law of the road); for instance, Iowa Code § 80.22, which prohibits departments other than the Department of Public Safety (DPS) from exercising general police powers. The IDOT has no authority to interpret code sections in the DPS code chapter. And as the district court recognized, Iowa Code § 804.9 (the citizen's arrest statute) "is the primary statute relied upon by the IDOT in this case" and that law is one "of general applicability that [the] IDOT has not been given power to interpret." (App. 254).

"Because this is not an area where interpretation of the law has been clearly vested in the discretion of the agency, [the court] need not give deference to the IDOT's interpretation . . . and [is] free to substitute [its]

judgment de novo for the agency's interpretation." *Welch v. Iowa Dep't of Transp., Motor Vehicle Div.*, 801 N.W.2d 590, 594 (Iowa 2011).

### ARGUMENT

**I. The Iowa Code (1939 through May 11, 2017) did not authorize IDOT employees to stop motor vehicles for the purpose of enforcing traffic laws beyond those laws relating to operating authority, registration, size, weight, and load.**

The ultimate question in this case is whether the IDOT's policy of enforcing laws outside the scope of § 321.477 was illegal. The IDOT has previously taken the stance that it possesses the authority under its enabling statutes to enforce laws outside the scope of § 321.477. (*See* App. 229, 231, 233-246). In this action, however, the IDOT conceded it does not have general arrest authority. (App. 78-79, 110-111, 132-133, 164-165). Nevertheless, a review of the relevant law is necessary to support Petitioners' contention that IDOT employees did not possess the authority to stop motor vehicles for the purpose of enforcing traffic laws beyond those laws relating to operating authority, registration, size, weight, and load at times material to this action.

The authority to enforce the laws of Iowa necessary must derive from the Iowa Code. This is no less true when speed restrictions are involved: "All Iowa rules and regulations governing motor traffic on the state highways are based upon statutes." *Merchants Motor*, 239 Iowa at 890. The IDOT itself is a "creature[] of statute" with authority to act only as authorized by statute. *Id.*

Understanding the limitations on the IDOT's statutory authority requires an examination of legislative history. When the IDOT was formed in 1974 to manage transportation-related administrative functions, it was not created from whole cloth. Rather, pre-existing governmental divisions were reorganized and emerged consolidated as the IDOT. It thus is necessary to understand the authority of those precursor departments—and how the Iowa Supreme Court interpreted the relevant statutes governing those departments—in order to understand the modern-day statutory scheme.

The punchline is the case of *Merchants Motor Freight v. State Highway Comm'n*, 239 Iowa 888 (1948), wherein the Iowa Supreme Court held that the predecessor agency to the IDOT did not possess the authority to enforce laws outside the scope of § 321.477. *Merchants Motor* ultimately dictates the outcome in this case: the IDOT's policy of enforcing laws beyond the scope of § 321.477 was illegal and the district correctly reversed the IDOT. In order to understand the context in which *Merchants Motor* was decided and why that case still governs, the following outlines the applicable statutes and traces the development of the law over time.

***1. 1937: Motor Vehicle Department & Highway Safety Patrol established.***

In 1937, the Motor Vehicle Department, a predecessor to the IDOT, was created within the Secretary of State's office and split into two divisions:

1) the Division of Registration and 2) the Division of Highway Safety and Patrol. 47th G.A. 134 § 2, 14 (Iowa 1937). Thus, the legislature established Highway Safety Patrol under the Motor Vehicle Department's purview. *Id.* § 30. The Highway Safety Patrol Division was tasked with enforcing motor vehicle laws but was further empowered to arrest individuals who violated any law. *Id.* § 36.

***2. 1939: Department of Public Safety established and given exclusive enforcement authority.***

In 1939, the legislature created the Department of Public Safety (DPS) and centralized all of the state peace officers under that umbrella. 48th G.A. 120 (Iowa 1939) (codified at Iowa Code T. V, Ch. 67.1 (1939)). As part of that reorganization, the legislature moved the Motor Vehicle Department from under the Secretary of State and into the newly-created DPS. 48th G.A. 121 § 7 (Iowa 1939) (codified at Iowa Code T. XIII, Ch. 251.1, § 5000.02 (1939)).

At the same time, the legislature removed the Highway Safety Patrol Division from under the umbrella of the Motor Vehicle Department and located it within the DPS. 48th G.A. 120 § 4 (Iowa 1939) (codified at Iowa Code T. V, Ch. 67.1, § 1225.09 (1939)). The 1939 legislation further placed traffic enforcement under the DPS's control, independent of the Motor Vehicle Department. *See id.* § 8 (stating peace officer duties include enforcing "all laws relating to traffic on the public highways of the state, including those

relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and busses”).

Having centralized all of the state police powers under one department, the 1939 legislation explicitly forbid “[a]ll other departments and bureaus of the state . . . from employing special peace officers or conferring upon regular employees, and policy powers to enforce provisions of the statutes, which are specifically reserved by this act to the [Department of Public Safety].” *Id.* § 95 (codified at Iowa Code T. V, Ch. 67.1, § 1225.26 (1939)).

***3. 1941: Limited police power to State Highway Commission.***

A separate commission, the State Highway Commission, existed independent of the DPS and bore responsibility for constructing and maintaining Iowa’s roads. Iowa Code T. XIII, Ch. 238, § 4626 (1939) (describing duties of the State Highway Commission). In 1941, the legislature expanded the State Highway Commission’s authority. The legislature authorized the State Highway Commission to confer on certain employees “the authority of a peace officer to control, direct, and weigh traffic on the highways, and to make arrests for violations of the motor vehicle laws relating to the size, weight and load of motor vehicles and trailers.” 49th G.A. 177 § 2 (Iowa 1941) (codified at Iowa Code T. XIII, Ch. 321, § 321.477 (1946)). This is the statute at the center of this case.



**4. 1948: Iowa Supreme Court interprets Iowa Code § 321.477 in *Merchants Motor* decision.**

In the 1948 case of *Merchants Motor*, The Iowa Supreme Court held that Chapter 321 does not confer authority to enforce statutes unrelated to the purposes delineated in Iowa Code § 321.477. In *Merchants Motor*, a corporation sought a ruling declaring that the State Highway Commission’s authority under Iowa Code § 321.477 was “limited to size, weight and load” and enjoining the State Highway Commission from “acting beyond that limitation.” *Merchants Motor*, 239 Iowa at 890.

The Iowa Supreme Court found in favor of the corporation on both issues and affirmed the district court’s holding that Iowa Code § 321.477 limited the State Highway Commission’s enforcement authority to size, weight and load. *Id.* at 890, 896. The Iowa Supreme Court also upheld the district court’s grant of an injunction prohibiting the State Highway Commission from acting outside that authority. *Id.*

In doing so, the Court highlighted in *Merchants Motor* that Iowa Code § 80.22 (1946) prohibits non-DPS departments from exercising police powers and that Iowa Code § 321.2 (1946) reserves enforcement of traffic laws to the DPS. *Id.* at 891. The Court specifically rejected the argument that the definition of “peace officer” in Iowa Code § 321.1 expands the grant of authority in Iowa Code § 321.477:

Section 321.1(45) defines a peace officer for the purposes of the chapter to mean ‘every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 748.3.’ . . . To say that, when the legislature conferred on certain highway commission employees ‘the authority of peace officers to control, direct, and weigh traffic on the highways’ it intended to vest them with the authority conferred by Section 321.1(45) . . . is without merit. The authority of the defendants, under the motor vehicle statutes, is limited to size, weight and load of vehicles and the trial court was correct in so holding.

*Merchants Motor*, 239 Iowa at 893.

The *Merchants Motor* Court further recognized the State Highway Commission’s argument that “under Section 321.492, its employees, designated in Section 321.477, are given specific authority to act in regard to registration and licenses,” but explained that “the fallacy of [the State Highway Commission’s] position lies in the fact that [its] employees are not peace officers.” *Id.* at 893. Iowa Code § 321.477<sup>9</sup> thus limits Iowa Code § 321.492.

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<sup>9</sup> At the time of *Merchants Motor*, Iowa Code § 321.492 stated:

Any peace officer is authorized to stop any vehicle to require exhibition of the driver’s operator or chauffeur license, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, bills of lading or other manifest of employment, and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of such vehicle.

50th G.A. 164 § 4 (codified at Iowa Code § 321.492 (1946)). Iowa Code § 321.492 remains nearly unchanged in the current code, which states:

The *Merchants Motor* Court also rejected the argument that the ability to “control” traffic, *see* Iowa Code § 321.477, expands the authority of a Chapter 321 peace officer. *Id.* at 892. The Court explained: “the word ‘control’ as here used, applies not to the authority to act, but to enforcement of that authority.” 239 Iowa at 892. The Court likewise rejected the argument that the State Highway Commission’s enforcement of laws outside the scope of § 321.477 could be justified as a citizen’s arrest. *Id.* at 893.

#### **5. 1974: IDOT Established.**

In 1974, the legislature created the IDOT and transferred certain duties of the State Highway Commission and DPS’s Motor Vehicle Department to that new department. 65th G.A. 1180 (Iowa 1974). In essence, the 1974 legislation consolidated all transportation-related administrative functions into one department, the IDOT. As the new legislation stated, “There is created a state department of transportation which shall be responsible for the

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A peace officer is authorized to stop a vehicle to require exhibition of the driver's license of the driver, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or other manifest of employment, tires, and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of the vehicle.

Iowa Code § 321.492 (2016).

plan, development, regulation, and improvement of transportation in the state as provided by law.” 65th G.A. 1180 § 2 (Iowa 1974) (codified at Iowa Code § 307.2); *see also* 65th G.A. 1180 § 27 (Iowa 1974) (codified at Iowa Code § 307.27) (listing the IDOT administrator’s responsibilities).

The 1974 legislation transferred the DPS Motor Vehicle Department’s responsibilities to the IDOT. Prior to the 1974 legislation, Iowa Code § 321.2 stated:

The department of public safety, under the commissioner thereof, shall constitute the motor vehicle department for the administration and enforcement of [Chapter 321, Motor Vehicles and Law of the Road.]

Iowa Code § 321.2 (1971). In other words, the Motor Vehicle Department was within the DPS and was responsible for enforcing Chapter 321. The 1974 legislation deleted that language in § 321.2 and replaced it with: “The state department of transportation shall administer and enforce the provisions of this chapter.” 65th G.A. 1180 § 101 (Iowa 1974). In effect, then, the DPS Motor Vehicle Department was replaced by the IDOT.

But the general power to enforce the *traffic laws* of Chapter 321 remained with the DPS Division of Highway Safety Patrol. The 1974 legislation provided:

The division of the highway safety patrol of the department of public safety shall enforce the provisions of [Chapter 321, Motor Vehicles and Law of the Road] relating to traffic on the public

highway of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks, and buses, and to see that proper safety rules are observed.

*Id.* (codified at Iowa Code § 321.2 (1975)).

The only police authority granted to the IDOT was the authority formerly granted to the State Highway Commission via §§ 321.476 and 321.477. *Id.* §§ 107, 113. The 1974 legislation changed the language of Iowa Code §§ 321.476 and 321.477 by deleting “state highway commission” and replacing that language with “department.” *Id.* In other words, the IDOT subsumed the State Highway Commission and all of its authority.

The 1974 legislation also slightly expanded the IDOT’s police power by authorizing it to confer on its employees the authority of a peace officer:

to control and direct traffic and weigh vehicles, and to make arrests for violations of the motor vehicle laws relating to the *operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier's interstate transportation service.*

*Id.* § 107 (emphasis on added language) (codified at Iowa Code § 321.477 (1975)).

#### **6. 1987: Iowa Supreme Court reaffirms *Merchants Motor*.**

After *Merchants Motor*, the Iowa Supreme Court did not again apply Iowa Code § 321.477 until the 1987 decision of *State v. A-1 Disposal*, 415 N.W.2d 595 (Iowa 1987). In that case, the defendants challenged convictions for operating overweight vehicles, arguing they had been illegally stopped.

The case turned on the Court’s interpretation of Iowa Code §§ 321.465 and 321.476 and whether stops authorized by Iowa Code § 321.476 nevertheless ran afoul of the constitutional right to be free of unreasonable searches and seizures.

The Court concluded § 321.476 stops are constitutional and, in doing so, emphasized the regulatory purpose of the IDOT. *Id.* at 599. The Iowa Supreme Court reiterated the holding of *Merchants Motor*: “DOT officers’ power to intrude on individuals is strictly limited by the Iowa Code to inspecting for registration, weight, size, load and safety violations. Iowa Code §§ 321.476, 321.477, 321.492.” *Id.* The Court found the stops in that case to be proper because the IDOT officers “were stopping only commercial trucks over five tons to check vehicle registrations, inspect for safety violations and weigh each vehicle as allowed by statute.” *Id.*

***7. 1990: Attorney General Opinion regarding Iowa Code § 321.477.***

In 1990, the Director of the IDOT posed two of questions to the Iowa Attorney General relating to IDOT peace officers’ authority to enforce laws unrelated to operating authority, registration, size, weight, and load: 1) “whether DOT peace officers are empowered by the general arrest provisions of Iowa Code section 804.7 or limited by the arrest powers enumerated under Iowa Code section 321.477” and 2) “whether DOT peace officers have

authority to enforce the Operating While Intoxicated (OWI) laws found in Iowa Code chapter 321J (1989).” 1990 Iowa Op. Att’y Gen. 100, 1990 WL 484921 (1990).

On the first question, the Attorney General opined that IDOT peace officers do *not* have general arrest powers but are instead limited to the arrest powers enumerated in Iowa Code §§ 321.477 and 321.492. *Id.* at \*2 (citing *Merchants Motor* and *A-1 Disposal*). The Attorney General summarized the reasoning for its conclusion:

In resolving this apparent statutory conflict, we employ several rules of statutory construction and reached the following consistent results: (1) that sections 321.477 and 321.492 are special provisions that prevail as exceptions to the general provisions, (2) that the express mention of certain conditions of entitlement under sections 321.477 and 321.492 implies the exclusion of others, and (3) that such a reading gives effect to sections 321.477, 321.492, and 804.7.

*Id.* at \*2. The Attorney General also recognized that the “limitation on the power of arrest also, of course, would apply to other aspects of the enforcement power of DOT peace officers, i.e., the issuance of citations, the execution of warrants, and the seizure of evidence.” *Id.* n.1 at \*2.

On the second question, the Attorney General opined that IDOT peace officers are authorized to enforce OWI laws, per Iowa Code § 321J.7(e), so long as they are properly trained. Petitioners do not dispute this. The Attorney General does discuss citizen’s arrest power as further authorization for OWI

enforcement by IDOT peace officers. The Attorney General apparently did not believe, however, that the citizen’s arrest power had any bearing on the first question, likely because *Merchants Motor* had rejected that concept.

**8. Summary of law applicable until May 11, 2017.**

*Merchants Motor*’s interpretation of Iowa Code § 321.477 controls this case. Though the IDOT has subsumed the State Highway Commission, the applicable statutes did not otherwise materially change between the *Merchants Motor* opinion and 2016.<sup>10</sup> It is the State Patrol that is responsible for enforcing the provisions of Chapter 321 “relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and to see that proper safety rules are observed.” *Id.* § 321.2 (2016). The State Patrol is still situated within the DPS. Iowa Code § 80.9 (2016). Departments other than the DPS—which would include the IDOT—are expressly prohibited from exercising general police powers. *Id.* § 80.22 (2016).<sup>11</sup>

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<sup>10</sup> A chart comparing the relevant statutes as they existed at the time of *Merchants Motor* and as they existed in 2016 is provided at the end of this brief.

<sup>11</sup> Iowa Code §§ 80.1A, 80.15, 97A.1, and 804.11(c) (2016) all provide the definition of peace officer for purposes of the DPS.



While the scope of Iowa Code § 321.477 is broader than it was in 1948, none of the additions to that statute authorize enforcement of speed restrictions. Iowa Code § 321.477 (2016) grants Chapter 321 peace officers enforcement authority “relating to the *operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier’s interstate transportation service with the department.*” Iowa Code § 321.477 (2016) (additional scope of authority emphasized). General traffic enforcement, including enforcement of speed restrictions, remains outside the scope of § 321.477.

The definition of “peace officer” in Iowa Code § 321.1 also remains materially unchanged from the time of *Merchants Motor*. At the time of *Merchants Motor*, Iowa Code § 321.1 defined “peace officer” as “every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 748.3.” Iowa Code § 321.1 (1946). Iowa Code § 748.3, situated in the Iowa Code Chapter governing criminal procedure, defined “peace officers” as (1) sheriffs and sheriffs’ deputies, (2) constables, (3) marshals and policemen of cities and towns, (4) special agents working for the DPS, and (5) other individuals as designated by law. Iowa Code § 748.3 (1946). The definition of “peace officer” is now found at Iowa Code § 321.1(50) (2016) and the criminal

procedure chapter definition is found at Iowa Code § 801.4(11) (2016). The list of individuals considered peace officers under Iowa Code § 801.4(11) (2016) is more expansive than the 1946 code—but none of the additions impact the IDOT’s enforcement authority. *See* Iowa Code § 801.4(11) (2016) (now listing parole officers, probation officers, security officers working for the board of regents, aviation authority officers, and conservation officers).

Iowa Code § 801.4(11) now explicitly acknowledges IDOT-designated peace officers as “peace officers” for purposes of Chapter 801, Criminal Procedure. But Iowa Code § 801.4(11)(h) defines “peace officer” to include “[s]uch employees of the department of transportation as are designated ‘peace officers’ by resolution of the department under section 321.477.” (Emphasis added). Iowa Code § 801.4(11)(h) thus directs back to § 321.477, which by its plain language (confirmed by the *Merchants Motor* Court) grants only limited enforcement powers to the IDOT.

**II. Iowa Code chapter 804 does not authorize the IDOT policy of motor vehicles for the purpose of enforcing traffic laws beyond those laws relating to operating authority, registration, size, weight, and load.**

Having conceded it has no general arrest authority, the IDOT instead justifies its policy of enforcing laws outside the scope of Iowa Code § 321.477 as an exercise of citizen’s arrest authority. The IDOT suggests that its employees—State employees labeled by the IDOT as so-called “peace

officers” and equipped with uniforms, badges, weapons, radar detectors, marked vehicles, flashing overhead lights, and sirens—are completing citizen’s arrests when they effectuate the IDOT’s policy to detain and cite those observed violating speeding laws. An official law enforcement policy of citizen’s arresting. The absurdity is self-evident. Such absurdity “is a ‘stop’ sign in the judicial interpretation of statutes.” *Schonberger v. Roberts*, 456 N.W.2d 201, 203 (Iowa 1990). Like the district court, this Court should reject the IDOT’s absurd argument and rule that the IDOT’s policy of stopping motorists for violations unrelated to operating authority, registration, size, weight, and load was illegal under *Merchants Motor* and the plain language of Iowa Code §§ 80.22, 21.2, 321.477, and 804.24.

**1. *Plain language of Chapter 804 does not authorize IDOT’s policy.***

Iowa Code Chapter 804 differentiates between citizen’s arrest, Iowa Code § 804.9, and arrest by a peace officer, Iowa Code § 804.7. Iowa Code § 804.9 provides:

A private person may make an arrest:

1. For a public offense committed or attempted in the person’s presence.
2. When a felony has been committed, and the person has reasonable ground for believing that the person to be arrested has committed it.

Iowa Code § 804.9 (emphasis added). This is commonly referred to as a citizen’s arrest. Under Iowa Code § 804.24, “[a] private citizen who has arrested another for the commission of an offense must, without unnecessary delay, take the arrested person before a magistrate, or deliver the arrested person to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate.” Iowa Code § 804.24; *see also Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 770 (Iowa 2002) (recognizing the necessity of compliance with Iowa Code § 804.24).

The IDOT has run afoul of these statutes in two ways. One, IDOT employees were not taking motorists before a magistrate or delivering the motorists to a peace officer and accompanying the peace officer before the magistrate. IDOT employees were issuing citations to motorists directly. This is a power not granted to private persons, which illustrates that IDOT employees were not acting as private persons.

Two, IDOT employees were not acting as “private persons” when they issued citations unrelated to operating authority, registration, size, weight, and load. They were acting in their official capacities as officers of the IDOT. IDOT employees used State-issued equipment—uniforms, badges, weapons, radar detectors, marked vehicles, flashing overhead lights, and sirens—and

asserted the authority of the State when they detained and cited Iowa motorists. A citizen who observed a violation of a traffic law would not have the ability to pull another motorist over and run that motorist's license and registration through a law enforcement database. *See State v. Lloyd*, 513 N.W.2d 742, 745 (Iowa 1994) ("Although a private citizen would have had the authority to arrest [a motorist] for the public offense of driving with defective taillights, such a private citizen would have lacked the means to flag [a motorist] down and ensure that the violation be sanctioned."); *see also* Iowa Code § 321.433 (prohibiting sirens on unauthorized vehicles); *See People v. Lahr*, 147 Ill. 2d 379, 383 (1992) ("We believe it is generally true that the use of radar guns for monitoring the speed of traffic is limited to police officers. Therefore, despite the fact that this type of radar equipment is not strictly limited to police officers, we believe its use in this case was an assertion of the officer's police authority."). Iowa Code § 804.9 thus does not apply. The district court was correct when it ruled IDOT employees "are not acting as private persons, but state actors." (App. 259).

By the IDOT's logic, the IDOT could adopt a policy of enforcing any laws it wished under the guise of the citizen's arrest statute. The IDOT could send MVE officers to college bars to cite individuals for underage drinking. MVE officers could patrol the aisles of Wal-Mart to crack down on theft.

These non-DPS officers could duplicate the efforts of actual DPS officers. No doubt this is not what the legislature intended.

Similarly, by the IDOT's logic, *any* state agency could begin patrolling Iowa roadways and issuing traffic citations under citizen's arrest authority. Again, there can be no doubt this was not contemplated by the legislature. As the district court aptly noted:

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 state agencies could do so. This undercuts IDOT's argument in this case.

(App. 259, n.4). The IDOT's policy cannot be ratified by Iowa Code § 804.9.

**2. Merchants Motors *rejected citizen's arrest defense.***

The citizen's arrest defense raised was explicitly rejected by the Iowa Supreme Court in *Merchants Motor* for exactly the reasons above. (*See also* App. 258 (recognizing this). In *Merchants Motor*, the State Highway Commission argued that their actions were justified as a citizen's arrest. The Supreme Court disagreed:

Appellants state that even though no statutory authorization exists for enforcing the motor vehicle laws, as to license and registration, a violation thereof constitutes a misdemeanor, Section 321.17. That when committed in his presence any person may arrest, and the fact that the defendants are clothed with the authority of peace officers, does not prevent them from acting as individuals. This no doubt is true, but is not a question presented here for determination. *The record clearly shows that defendants*

*acted, and in the future will act, officially and under orders from the Highway Commission. Furthermore, the appellants do not threaten arrests and have not arrested. They have issued summonses which are not authorized by Section 755.5.<sup>12</sup> There is not merit in this contention.*

*Merchants Motor*, 32 N.W.2d at 776 (emphasis added).

To summarize, *Merchants Motor* rejected the citizen’s arrest defense because 1) IDOT employees were acting in an official capacity pursuant to an official policy—not as private citizens; 2) 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.

In its Rulings, the IDOT incorrectly concluded *Merchants Motor* did not address whether citizen’s arrest validated enforcement actions beyond the scope of § 321.477. (App. 109, 163). In its appeal brief, the IDOT again emphasizes the language in *Merchants Motor* stating “This is no doubt true, but is not a question presented here for determination.” (IDOT Brief at 33, 55). Based on this language, the IDOT suggests that a citizen’s arrest defense was not an issue decided by *Merchants Motor*. But that quotation must be read

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<sup>12</sup> Iowa Code § 755.5 (1946) was the citizen’s arrest code section. That code section is identical to the current Iowa Code § 804.9 (2016), except for the gendered pronouns. Iowa Code § 755.14 (1946) is also identical to Iowa Code § 804.24 (2016).

in context. The Iowa Supreme Court’s discussion of the citizen’s arrest defense is found under roman numeral II, indicating it is a distinct issue. The sole paragraph under roman numeral II (quoted in its entirety above) pertains to the applicability of a citizen’s arrest defense.

The *Merchants Motor* Court begins its discussion by acknowledging the State Highway Commission argument that citizen’s arrest validated enforcement actions beyond the scope of § 321.477. The Court accepts that a peace officer retains the authority to effectuate a citizen’s arrest even though “clothed with the authority of peace officers.” *Merchants Motor*, 32 N.W.2d at 776. But whether citizen’s arrest could validate a peace officer’s otherwise non-authorized exercise of arrest authority was “not a question presented here for determination” because the case did not involve a single act by a peace officer—it involved an official policy of the State Highway Commission. *Id.* “The record clearly shows that defendants acted, and in the future will act, officially and under orders from the Highway Commission,” the Court stated. *Id.*

In other words, the Iowa Supreme Court refused to recognize citizen’s arrest as a defense to an agency policy whereby State employees acted beyond the scope of their authority. Accordingly, the same argument the IDOT uses to justify its actions in excess of § 321.477 is the same argument that was



raised and rejected in *Merchants Motors*. The fact that IDOT employees acted pursuant to an official policy defeats the IDOT's citizen's arrest defense.

It is also immaterial that the officers in *Merchants Motor* were issuing summonses, while the IDOT officers are issuing uniform citations. The adoption of the uniform citation procedures in Iowa did not broaden IDOT's enforcement authority; it did not abrogate Iowa Code § 321.477. Indeed, the IDOT's use of uniform citations is *worse* than the issuance of a summons because a uniform citation is a charging document. Iowa Code § 805.6. The policy of issuing uniform citations thus is an exercise of power beyond that which was rejected in *Merchants Motor*.

**3. State v. Lloyd does not abrogate Merchants Motors.**

*State v. Lloyd*, 513 N.W.2d 742, 743 (Iowa 1994) does not abrogate the holding of *Merchants Motor*. In *Lloyd*, a South Dakota officer attempted to stop the defendant's vehicle in South Dakota because the vehicle lacked lighted taillights. *Id.* at 742. The defendant did not stop but instead crossed over the state line, into Iowa. *Id.* at 742–43. The South Dakota officer followed the defendant into Iowa, completed the stop there, and issued the defendant a warning and ticket for equipment violations. *Id.* at 743. The South Dakota officer also called an Iowa officer to the scene and the Iowa officer charged the defendant with operating while intoxicated. *Id.*

The defendant subsequently attacked the stop based on the South Dakota officer's lack of jurisdiction and asked the court to suppress the evidence gathered as a result of the stop. *Id.* The State could not justify the South Dakota officer's actions under the Uniform Fresh Pursuit Law because the violation that motivated the South Dakota officer to stop the defendant was not a felony, *see id.* at 744, but the State raised citizen's arrest as a defense to the officer's lack of jurisdiction. *Id.*

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. *Id.* The Iowa Supreme Court commented that the South Dakota officer's "decision to detain Lloyd while he called in an Iowa officer for the suspected OWI violation constituted prudent and commendable conduct, not an unlawful detention or arrest." *Id.* at 744. The Iowa Supreme Court further rejected the defendant's argument that "[w]hen the officer takes police action as a private citizen . . . he must act like a private citizen," finding such a restriction "would impose a needless impediment on the police in their routine enforcement of motor vehicle regulations." *Id.* at 745.

*Lloyd* does not govern here for four key reasons. First, the South Dakota officer possessed the authority to stop the *Lloyd* defendant when the officer

initiated the interaction. Though the defendant's travel into Iowa eliminated the South Dakota officer's jurisdiction, the initial pursuit was lawful. In contrast, IDOT MVE officers do not possess the authority to enforce laws outside the scope of § 321.477. At no point were the IDOT officers acting within the scope of Iowa Code § 321.477.

Second, *Lloyd* did not involve an official law enforcement policy of citizen's arresting to avoid statutory restrictions on power. One isolated incident where an officer was in fresh pursuit over state lines is miles apart from the facts of this case, where official policy led to the stop of thousands of Iowans. *Lloyd* viewed the officer's actions as "routine enforcement of motor vehicle regulations." *Id.* The issue is quite different when the officer's action is "routine illegal enforcement of motor vehicle regulations." As the district court recognized, *Lloyd* "did not address a situation where 100 uniformed officers rely on citizen's arrest powers to exercise authority not given to them by the legislature, and to issue thousands of citations outside their designated statutory authority." (App. 261).

Third, *Lloyd* never confronted Iowa Code § 80.22, which prohibits departments other than the DPS from exercising general police powers, or Iowa Code § 804.24, which requires a person conducting a citizen's arrest to present the individual to a magistrate. There is no discussion in *Lloyd* of either

Iowa Code § 804.24 or Iowa Code § 80.22, likely because the officer who acted outside his authority was a South Dakota officer. There was no issue in *Lloyd* of one department usurping the authority of another, as there is here. For this same reason, there is no discussion in *Lloyd* of *Merchants Motor's* rejection of similar citizen's arrest arguments. *Lloyd* is a classic example of strange facts making bad law. *Lloyd* should be limited to the unique facts presented in that case. Applying *Lloyd* to the facts of *this* case would render both Iowa Code § 804.24 and Iowa Code § 80.22 superfluous.

Finally, and most importantly, *Lloyd* does not govern because *Merchants Motor* does. *Merchants Motor* is directly on point, while *Lloyd* does not involve an Iowa officer effectuating an illegal policy to act outside his or her statutory authority. Between *Merchants Motor* and *Lloyd*, *Merchants Motor* is unquestionably the controlling case. *Merchants Motor* dealt with the exact same issue facing this Court: a departmental policy to exceed the scope of the authority granted by Iowa Code § 321.477. *Lloyd*, on the other hand, represents a fact-specific consideration of one event where the precipitating citation did not arise from any wrong-doing of an Iowa officer acting pursuant to departmental policy. Moreover, as the district court observed, “The *Lloyd* decision did not overturn the *Merchants Motor Freight* decision, nor did it even mention it.” (App. 261).

**4. *IDOT's interpretation of Chapter 804 renders superfluous multiple statutes.***

If the IDOT is allowed to justify its actions beyond the scope of § 321.477 under citizen's arrest authority, the exception entirely swallows the rule. *See State v. Gaskins*, 866 N.W.2d 1, 13 (Iowa 2015) (rejecting State's argument because it would create an exception that would swallow the rule). It is a "fundamental rule of statutory construction that [a court] should not construe a statute to make any part of it superfluous." *Petition of Chapman*, 890 N.W.2d 853, 857 (Iowa 2017). The procedure advocated by the IDOT renders the limitation stated in § 321.477 entirely superfluous. It also renders superfluous the requirement in § 804.24 that an arresting citizen must take the detainee before a magistrate. Finally, it renders superfluous the statutory scheme whereby the enforcement of traffic laws is vested solely in the DPS. *See Iowa Code* § 80.22; *id.* § 321.2. It is the State Patrol's responsibility to enforce noncommercial traffic laws—not the IDOT's responsibility:

The division of state patrol of the department of public safety shall enforce the provisions of this chapter relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and to see that proper safety rules are observed.

*Iowa Code* § 321.2(2); *see also Lahr*, 589 N.E.2d at 542 ("[U]pholding the arrest as a valid citizen's arrest . . . 'would allow police authorities to establish extraterritorial radar surveillance for speeding violations in any location

within this State outside of the respective police authorities' area of jurisdiction.' Such a far reaching result would virtually abolish the general rule regarding an officer's power outside of his jurisdiction.”).

This is a separation of powers issue. The legislature delineated the separate roles of IDOT and DPS. By its interpretation of the citizen’s arrest statutes, the IDOT attempts to expand its role far beyond what the legislature contemplated. This would create a huge loophole that was not intended by the legislature. Several states have refused to allow such a loophole. *See State v. Brown*, 39 N.E.3d 496, 502 (Ohio 2015) (“A traffic stop for a minor misdemeanor made outside a police officer’s statutory jurisdiction or authority violates the guarantee against unreasonable searches and seizures established by Article I, Section 14 of the Ohio Constitution.”); *People v. Williams*, 829 N.E.2d 1203 (N.Y. 2005) (holding a peace officer who acts under color of law and with all the accouterments of official authority cannot [effect a citizen’s arrest]); *Lahr*, 589 N.E.2d at 540 (“[W]hen outside his jurisdiction, a police officer’s right to arrest is no greater than that of a private citizen. Therefore, an extraterritorial arrest will not be upheld if in making the arrest the officer uses the powers of his office to obtain evidence not available to private citizens.”).

At bottom, “[t]he polestar of all statutory construction is the search for the true intention of the legislature.” *State v. Dann*, 591 N.W.2d 635, 638 (Iowa 1999). When the legislature created the DPS and IDOT, it intended those departments to have separate roles. Simply because the IDOT thinks it would be good policy to usurp the DPS’s role does not override the governing statutes.

**5. *Recent amendment of Iowa Code § 321.477 demonstrates IDOT lacked enforcement authority.***

The fact that the legislature recently amended § 321.477 to grant IDOT employees general law enforcement authority further demonstrates that the IDOT did not previously possess that authority under the citizen’s arrest provisions. The issue of whether the IDOT has been acting outside its authority was widely publicized in Iowa.<sup>13</sup> See History of enactment process,

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<sup>13</sup> See, e.g., Jason Clayworth, [Lawsuit seeks refund of 20,000-plus Iowa traffic tickets](http://www.desmoinesregister.com/story/news/crime-and-courts/2016/11/22/lawsuit-seeks-refund-20000-plus-iowa-traffic-tickets/94286348/), Des Moines Register (Nov. 22, 2016), available at <http://www.desmoinesregister.com/story/news/crime-and-courts/2016/11/22/lawsuit-seeks-refund-20000-plus-iowa-traffic-tickets/94286348/>; Jason Clayworth, [Iowa DOT accused of using 'scare tactics' so it can issue tickets](http://www.desmoinesregister.com/story/news/investigations/2017/04/20/iowa-dot-accused-using-scare-tactics-so-it-can-issue-tickets/305775001/), Des Moines Register (April 20, 2017), available at <http://www.desmoinesregister.com/story/news/investigations/2017/04/20/iowa-dot-accused-using-scare-tactics-so-it-can-issue-tickets/305775001/>; Jason Clayworth, [Second judge says Iowa DOT can't issue tickets](http://www.desmoinesregister.com/story/news/investigations/2017/03/01/second-judge-says-iowa-dot-cant-issue-tickets/98593988/), Des Moines Register (Mar. 1, 2017), available at <http://www.desmoinesregister.com/story/news/investigations/2017/03/01/second-judge-says-iowa-dot-cant-issue-tickets/98593988/>.

2A Sutherland Statutory Construction § 48:4 (7th ed.). (“Events immediately prior to the time an act becomes law can be a useful source to learn about legislative intent.”). The legislature responded to this issue by amending the Iowa Code to give IDOT employees authority to enforce *all* state laws, for a period of one year.<sup>14</sup> H.F. 463, 87 G.A. (Iowa 2017). House File 463 amended Iowa Code § 321.477 to state:

The department may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to ~~control and direct traffic and weigh vehicles, and to make arrests for violations of~~ enforce all laws of the state including but not limited to the rules and regulations of the department. Employees designated as peace officers pursuant to this section shall have the same powers conferred by law on peace officers for the enforcement of all laws of this state and the apprehension of violators.

H.F. 463 § 3 (alterations in original; underlying indicates newly added language). House File 463 also added a new subsection to § 321.477 stating:

The limitations specified in [an earlier, newly added] subsection shall in no way be construed as a limitation on the power of employees designated as peace officers pursuant to this section when a public offense is being committed in their presence.

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<sup>14</sup> House File 463 is set to automatically repeal on July 1, 2018. H.F. 463 § 4. Changing the law for a one-year period, “gives the state a year to more fully review whether and how a separation of powers and duties between various peace officers of the state is appropriate.” See Jason Clayworth and William Petroski, Lawmakers grant DOT one-year speeding ticket authority, Des Moines Register (Apr. 21, 2017), available at <http://www.desmoinesregister.com/story/news/politics/2017/04/21/lawmakers-grant-dot-one-year-speeding-ticket-authority/305877001/>.



H.F. 463 § 3 (underlying indicates newly added language). This legislation was signed into law on May 11, 2017 and became effective upon enactment.

H.F. 463 § 5.

The fact that the legislature recently amended § 321.477 to grant IDOT employees general law enforcement authority confirms that the IDOT did not previously possess that authority, either by its enabling statutes or by the citizen's arrest provisions. "[W]hen the legislature amends a statute, it raises a presumption that the legislature intended a change in the law." *Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446, 455 (Iowa 2014).

A review of the legislative history of House File 473 demonstrates that the legislature understood the IDOT had been operating beyond its authority by issuing citations to noncommercial vehicles and that House File 463 was necessary to grant the IDOT actual authority. Several legislators recognized that the IDOT had made a practice of exceeding its statutory authority:

- Representative Baudler: "They're using [the authority] but they don't have it." Representative Baudler, Iowa House of Representatives public comment on House File 473 at 06:16:20 (March 27, 2017).<sup>15</sup>
- Senator Danielson: "The problem with [Former IDOT Director Trombino's adoption of policy of ticketing noncommercial vehicles] is that it has created a resulting court case where two district courts have ruled

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<sup>15</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=H&clip=H20170327163935379&dt=2017-03-27&offset=1911&bill=HF%20463&status=i>

that the motor vehicle enforcement officers do not have the express statutory authority to do that. That's why the senate fix to that problem is the bill that is before us. . . . I consider the director's actions to be irresponsible given the language of the code. He should have come and asked us for permission to expand the mission of the DOT enforcement officers. He did not do that. He made a unilateral decision." Senator Danielson, Iowa Senate public comment on House File 473 at 03:42:25 (April 4, 2017).<sup>16</sup>

- Senator Johnson: "[I]f the [motoring public] get[s] pulled over by DOT enforcement, I sure hope that perhaps they're going to wonder, 'what are they doing out there, parked along the side of the road, waiting for somebody to roll through a stop sign, or checking somebody's speed, waiting for somebody to run a light.' That's not really what they're there for." Senator Johnson, Iowa Senate public comment on House File 473 at 03:52:40 (April 4, 2017).
- Representative Baudler: "If we do this amendment and bill, what we're doing is rewarding illegal behavior. It will start a ticket race and the people that will lose is Iowans." Representative Baudler, Iowa House of Representatives public comment on House File 473 at 06:51:55 (April 20, 2017).<sup>17</sup>
- Representative Gaskill: "I think it was illegal and it was wrong for them to do the behavior that they'd already done and I don't think we should stand behind that behavior." Representative Gaskill, Iowa House of Representatives public comment on House File 473 at 06:53:10 (April 20, 2017).
- Senator Danielson: "I believe the DOT has consistently over the last couple of years, not honored that process [of checks and balances]. And it is going to cost us money. . . . [W]hen we determine the mission of a department and commit the resources to it and hand it off to the executive branch, they

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<sup>16</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=S&clip=s20170404144554820&dt=2017-04-04&offset=2739&bill=HF%20463&status=r>

<sup>17</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=H&clip=H20170420184516016&dt=2017-04-20&offset=107&bill=HF%20463&status=r>

do not have carte blanche to expand it.” Senator Danielson, Iowa Senate public comment on House File 473 at 11:08:35 (April 21, 2017).<sup>18</sup>

One version of the bill would have limited the IDOT’s ticketing authority to “serious violations” and speeding twenty miles over the limit. Amendment H-1206.<sup>19</sup> The fact that this amendment was introduced and adopted demonstrates that the IDOT did not already have the power to do so under the citizen’s arrest statute.

The Iowa legislature fully recognized the complications that come when one department infringes on the authority of another. Multiple legislators expressed concern with the IDOT’s encroachment on the DPS’s enforcement authority:

- Representative Taylor: Noted language of amendment limiting IDOT enforcement to “serious violations” and 20+ MPH speeding “gives some comfort” regarding IDOT and DPS roles and will help to ensure “both agencies stay in their lane.” Representative Taylor, Iowa House of

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<sup>18</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=S&clip=s20170421085655450&dt=2017-04-21&offset=7737&bill=HF%20463&status=r>

<sup>19</sup> Available at <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=H-1206>. This amendment was adopted by the House on March 27, 2017 but was later supplanted by another amendment. See Bill History for House File 463, available at <https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=HF%20463&ga=87>.

Representatives public comment on House File 473 at 05:17:10 (March 27, 2017).<sup>20</sup>

- Representative Baudler: “What I feel you’re going to create here is the nose of the camel under the tent, and you’re going to end up with two state police agencies, with two different contracts, two different salary schedules coming out of the general fund of the road use tax fund, two sets of supervisors. . . . [T]he only way this will improve at any time in the future is if one agency takes over the other and all the supervisors of the agency that is taken over are gone. You can’t have two state police agencies.” Representative Baudler, Iowa House of Representatives public comment on House File 473 at 05:19:38 (March 27, 2017).
- Senator Johnson: “We don’t need two highway patrols in this State.” Senator Johnson, Iowa Senate public comment on House File 473 at 03:36:55 (April 4, 2017).<sup>21</sup>
- Senator Danielson: “We have to resolve the missions of these two departments, or it’s going to be a very very expensive nondecision, by default if we just let the DOT enforcement officers continue on the current path they are and we never really fund the troopers appropriately.” Senator Danielson, Iowa Senate public comment on House File 473 at 03:48:30 (April 4, 2017).
- Senator Breitbach: “I do realize that there are concerns with enforcement issues between the motor vehicle enforcement division and their mission, and the Iowa State Troopers and their mission. Hopefully, over the next year, we can address those issues. Senator Breitbach, Iowa Senate public comment on House File 473 at 03:54:30 (April 4, 2017).

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<sup>20</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=H&clip=H20170327163935379&dt=2017-03-27&offset=1911&bill=HF%20463&status=i>

<sup>21</sup> Available at <http://www.legis.state.ia.us/dashboard?view=video&chamber=S&clip=s20170404144554820&dt=2017-04-04&offset=2739&bill=HF%20463&status=r>

The legislature therefore adopted the one-year sunset clause and the reporting requirement to ensure that this issue will be addressed next legislative session. *See, e.g.*, Iowa House of Representatives public comment on House File 473 at 06:50:00 (April 20, 2017) (multiple representatives recognizing the legislation was a “temporary band-aid”).

The Iowa Supreme Court has rejected the idea that an amendment to a law should be interpreted as “merely [clarifying] the law and remov[ing] any doubt as to its meaning.” *Martin v. Waterloo Cmty. Sch. Dist.*, 518 N.W.2d 381, 383 (Iowa 1994). Absent legislative history or an explanation accompanying an amendment, the presumption that amendment intends a change in the meaning of the law applies. *Id.* Here, the record confirms that the legislature intended a change in the law. It follows that, prior to the enactment of House File 463, neither the IDOT’s enabling statutes nor citizen’s arrest justified the IDOT’s policy of enforcing laws outside the scope of § 321.477. The district court correctly concluded that the recent amendment “demonstrates that IDOT did not have general enforcement authority under the previous version of the statute.” (App. 263).

### **CONCLUSION**

Petitioners ask this Court to hold that, prior to May 11, 2017, the IDOT’s policy of enforcing laws outside the scope of Iowa Code § 321.477

was illegal. The only identified statutory exceptions to the limitations of Iowa Code § 321.477 are those found in Iowa Code § 321J.1(8)(e) and Iowa Code § 804.17, and those exceptions do not justify the IDOT's general enforcement policy. This Court should affirm the district court's ruling and reverse the IDOT's declaratory rulings.

**ORAL ARGUMENT NOTICE**

Counsel requests oral argument.

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## CHART OF RELEVANT STATUTES

<i>Merchants Motor - 1946 Iowa Code</i>		<b>2016 Iowa Code</b>	
321.2	“The department of public safety, under the commissioner thereof, shall constitute the motor vehicle department for the administration and enforcement of this chapter.”	321.2	<p>“1. Except as otherwise provided by law, the state department of transportation shall administer and enforce the provisions of this chapter.</p> <p>2. The division of state patrol of the department of public safety shall enforce the provisions of this chapter relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and to see that proper safety rules are observed.</p> <p>3. The state department of transportation and the department of public safety shall cooperate to insure the proper and adequate enforcement of the provisions of this chapter. [subsection 4 omitted as irrelevant]”</p>
321.477	Conferred on State Highway Commission peace officers “the authority of a peace officer to control, direct, and weigh traffic on the highways, and to make arrests for violations of the motor vehicle laws relating to the size, weight and load of motor vehicles and trailers.”	321.477	Conferred on IDOT peace officers enforcement authority to “make arrests for violations of the motor vehicle laws relating to the operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier's interstate transportation service with the department.”

<b>Merchants Motor - 1946 Iowa Code</b>		<b>2016 Iowa Code</b>	
321.1(45)	“ ‘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 748.3.”	321.1(50)	“‘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.”
748.3 (criminal procedure chapter)	defined “peace officers” as (1) sheriffs and sheriffs’ deputies, (2) constables, (3) marshals and policemen of cities and towns, (4) special agents working for the DPS, and (5) other individuals as designated by law	801.4(11)	“Peace officers”, sometimes designated “law enforcement officers”, include: ...Such employees of the department of transportation as are designated “peace officers” by resolution of the department under section 321.477.
80.22	“All other departments and bureaus of the state are hereby prohibited from employing special peace officers or conferring upon regular employees any police powers to enforce provisions of the statutes, which are specifically reserved by this act to this department.”	80.22	“All other departments and bureaus of the state are hereby prohibited from employing special peace officers or conferring upon regular employees any police powers to enforce provisions of the statutes which are specifically reserved by 1939 Iowa Acts, ch. 120, to the department of public safety.”
755.5	Same except for gendered pronouns	804.9	“A private person may make an arrest:  1. For a public offense committed or attempted in the person's presence.  2. When a felony has been committed, and the person has reasonable ground for believing that the person to be arrested has committed it.”



<b><i>Merchants Motor - 1946 Iowa Code</i></b>		<b>2016 Iowa Code</b>	
755.14	Identical	804.24	“A private citizen who has arrested another for the commission of an offense must, without unnecessary delay, take the arrested person before a magistrate, or deliver the arrested person to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate.”

**CERTIFICATE OF COMPLIANCE AND SERVICE**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates. This brief contains 10,155 words.

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 Office Word 2010 in font size 14, Times New Roman.

I hereby certify that on April 10, 2018, I will serve this brief by mailing one copy to:

RICKIE RILEA AND TIMOTHY RILEY,  
Petitioners-Appellees

    /S/ Gina Messamer    

Dated: April 9, 2018  
Gina Messamer