

**IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 17-1232**

**STATE OF IOWA,
Plaintiff-Appellee**

vs.

**JEREMY M. WERNER,
Defendant-Appellant.**

**APPEAL FROM THE IOWA DISTRICT COURT
FOR IOWA COUNTY,
HONORABLE ANDREW B. CHAPPELL**

**DEFENDANT/APPELLANT'S FINAL BRIEF AND REQUEST FOR
ORAL ARGUMENT**

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

ROUTING STATEMENT

The district court ruled in this case that IDOT employees possess the authority to enforce Iowa’s speed laws. This appeal should be retained by the Supreme Court because, for over a year, the issue of whether IDOT employees are allowed to stop noncommercial motorists for speeding has been confronting and dividing district courts across the state.¹ This case presents the first appeal on that issue. Whether IDOT officers are cabined by Iowa Code § 321.477 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 substantial issue of first impression. The resolution of this issue will impact the validity of thousands of citations issued by IDOT employees. Iowa R. App. P. 6.1101(2)(c), (d).

Although the Iowa Supreme Court ruled in *Merchants Motor Freight v. State Highway Comm’n*, 239 Iowa 888 (1948) that IDOT employees’ authority to act as peace officers is limited by Iowa Code § 321.477, 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

¹ See, e.g., Jason Clayworth, [Second judge says Iowa DOT can’t issue tickets](https://www.desmoinesregister.com/story/news/investigations/2017/03/01/second-judge-says-iowa-dot-cant-issue-tickets/98593988/), Des Moines Register (3/1/17), available at <https://www.desmoinesregister.com/story/news/investigations/2017/03/01/second-judge-says-iowa-dot-cant-issue-tickets/98593988/>.

to consider whether those arguments warrant deviating from the *Merchants Motor* holding. Iowa R. App. P. 6.1101(2)(f).

CASE STATEMENT

On August 30, 2016, the State charged Mr. Werner with Operating a Motor Vehicle while License Revoked, in violation of Iowa Code § 321J.21. Mr. Werner filed a Motion to Suppress Evidence and Dismiss because his vehicle was stopped for speeding by an officer with the Iowa Department of Transportation's Motor Vehicle Enforcement Unit. (App. 17). The district court denied the motion, (App. 53), and Mr. Werner thereafter waived his right to a trial by jury and stipulated to a trial on the Minutes of Testimony. (App. 57). The district court ultimately found Mr. Werner guilty as charged and imposed a sentence of two days in jail, a \$1,000 fine, and applicable surcharges and costs. (App. 57; App. 62).

FACTS

On August 18, 2016, Ryan Glade, a Motor Vehicle Enforcement Officer (MVE) with the Iowa Department of Transportation (IDOT), was on patrol in Iowa County when he observed Mr. Werner traveling on Interstate 80 in a noncommercial vehicle. (App. 10, 53, 59; Supp. Trans. 4:17–5:3). IDOT Officer Glade was driving a white Chevrolet Tahoe bearing an IDOT

MVE insignia. (App. 19). IDOT Officer Glade used his vehicle’s LIDAR² equipment to measure Mr. Werner’s speed and determined Mr. Werner was traveling 72 mph in a 55 mph zone. (App. 59). IDOT Officer Glade pursued Mr. Werner’s vehicle and pulled him over. (App. 59). IDOT Officer Glade then “ran [Mr. Werner’s] driver’s license on MACH and with State Radio” and determined Mr. Werner’s driving privileges were revoked. (App. 22, 59). IDOT Officer Glade placed Mr. Werner under arrest and filed a Complaint against Mr. Werner for Operating a Motor Vehicle while License Revoked, in violation of Iowa Code § 321J.21.³

Mr. Werner filed a Motion to Suppress Evidence and Dismiss, citing *Merchants Motor Freight v. State Highway Comm’n*, 239 Iowa 888 (1948) for the proposition that the Iowa Code does not empower IDOT officers to enforce speed laws. (App. 19). Mr. Werner argued IDOT Officer Glade thus lacked authority to stop his vehicle for speeding. (App. 17). Because IDOT Officer Glade’s actions were in violation of the IDOT enabling statutes, Mr.

² LIDAR “is a surveying method that measures distance to a target by illuminating that target with a pulsed laser light, and measuring the reflected pulses with a sensor.” Lidar, <https://en.wikipedia.org/wiki/Lidar>.

³ IDOT Officer Glade also issued Mr. Werner a citation for speeding. (Iowa County Case No. STA0030721; *see also* Supp. Trans. 2:17–3:25). This speeding citation is scheduled for trial on June 5, 2018.

Werner asked the district court to suppress the evidence gathered as a result of the illegal stop and dismiss the prosecution. (App. 20).

In support of this argument, Mr. Werner provided the district court with a similar motion and ruling from *State v. Atzen*, Polk County Case No. STA0733477. (App. 37-41). In *Atzen*, IDOT MVE Officer Wittkowski, while driving an IDOT-issued vehicle bearing IDOT MVE insignia, stopped a noncommercial vehicle for speeding “based on his authority as a Department of Transportation peace officer.” (App. 26). The *Atzen* ruling recounted the IDOT officer’s testimony regarding the IDOT policy for stopping noncommercial vehicles:

Officer Wittkowski testified that it was his understanding that at the time he was hired, his authority to stop non-commercial vehicles for traffic violations was limited to traffic stops for reckless driving, operating while intoxicated, and for speeding violations in excess of 25 miles per hour over the posted speed limit. Officer Wittkowski further testified that a couple of years ago the Department of Transportation changed its internal, administrative policy to allow its motor vehicle enforcement officers to enforce all traffic laws, irrespective of the type of vehicle.

(12/20/16 Motion 10–11).

Mr. Atzen argued the evidence gathered by IDOT Officer Wittkowski must be suppressed lest Mr. Atzen’s right to due process, guaranteed by article 1, § 9 of the Iowa Constitution, and his right to be free of unreasonable searches and seizures, guaranteed by article I, § 8 of the Iowa

Constitution, be violated. (App. 38, 40). Mr. Atzen further asserted the appropriate remedy for a statutory violation is suppression. (App. 39-40). Mr. Werner likewise argued, “as noted in Atzen’s Motion to Suppress, evidence must be suppressed when [a] state agent violates statutory provisions.” (App. 20).

Applying *Merchants Motor*, the Polk County district court concluded in *Atzen* that the Iowa Code does not allow IDOT officers to enforce speeding laws and accordingly dismissed the speeding ticket issued by IDOT Officer Wittkowski. (App. 25-36). Mr. Werner asked the district court to adopt this same analysis: “Based upon the aforementioned facts, and giving weight to the Court’s recent Order in Atzen’s matter, Glade’s alleged traffic stop, and any evidence collected thereafter must be suppressed.” (App. 20).

In its resistance, the State correctly recognized the question presented as “whether DOT MVE officers acting as such are limited by statute in their traffic violation enforcement authority.” (App. 43). The State did not dispute that IDOT Officer Werner had been acting in his official capacity at the time he stopped Mr. Werner, but instead argued *Merchants Motor* had been abrogated by legislative amendments. (App. 45-46). The State pointed to Iowa Code §§ 801.4(11)(h), 321.492, and 321.1 as authority for IDOT

Officer Glade’s actions. (App. 45-46). The State alternatively argued IDOT Officer Glade possessed citizen’s arrest authority to stop Mr. Werner, even though he was acting as an IDOT employee at the time. (App. 50-51).

The district court held a hearing on the matter on March 6, 2017. At the hearing, Defense Counsel and the State alerted the district court to another district court ruling finding IDOT officers are not authorized to enforce speed restrictions.⁴ (Supp. Trans. 7:16–21, 8:9–14, 12:1–7). Defense Counsel further argued citizen’s arrest did not excuse IDOT Officer Glade’s actions:

[T]he *Merchants* case specifically talks about and rejects the argument that the DOT officer could have made a citizen’s arrest because they point out that would require filing . . . a citation in an area where they had not been authorized to file citations. And, in addition, if they were exercising that power as a citizen, an individual in a private vehicle would not be able to command somebody to pull over, only an individual who is vested with not only the appearance of authority but also lights, siren, et cetera.

(Supp. Trans. 12:17–13:1).

The district court concluded Iowa Code § 801.4, read in tandem with Iowa Code § 321.1(5), authorized IDOT Officer Glade to stop Mr. Werner for speeding. (App. 55). The district court further ruled, “even if Glade did

⁴ The parties referred to that case as “Roder” but the correct spelling is Roeder. *State v. Roeder*, Warren County Case No. STA0063067 (March 1, 2017 order dismissing speeding citation).

not have the authority as an IDOT officer to stop Werner's vehicle, his conduct still resulted in a valid citizen's arrest under Iowa Code §804.6." (App. 55). The district court accordingly denied Mr. Werner's Motion to Suppress Evidence and Dismiss.

After the district court denied his motion, Mr. Werner proceeded to a trial on the minutes and was found guilty as charged. (App. 57).

ARGUMENT

I. Preservation & Standard of Review.

Each of the following issues are preserved by Mr. Werner's Motion to Suppress Evidence and Dismiss. The Court reviews questions of statutory construction for corrections of errors at law. *State v. Iowa Dist. Court for Scott Cty.*, 889 N.W.2d 467, 470 (Iowa 2017).

II. IDOT Officer Glade Acted beyond His Statutory Authority When He Stopped Mr. Werner for Speeding.

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.*

The district court concluded that IDOT officers have the statutory authority to enforce speed restrictions. The district court's ruling, however, is diametrically opposed to the Iowa Supreme Court's holding in *Merchants Motor*. In *Merchants Motor*, the Iowa Supreme Court explained that Chapter 321 does not confer authority on the IDOT to enforce statutes unrelated to the purposes delineated in Iowa Code § 321.477. Pursuant to Iowa Code § 321.477 (2016),⁵ the IDOT

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 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.*

(Emphasis added). Because IDOT Officer Glade was acting outside the scope of Iowa Code § 321.477 when he stopped Mr. Werner, his exercise of authority was invalid.

1. Legislative and Judicial History.

Understanding the scope of the IDOT's statutory authority requires an examination of legislative history. When the IDOT was formed in 1974 to

⁵ The Iowa legislature amended Iowa Code § 321.477 effective May 11, 2017. This amendment gives IDOT employees authority to enforce all state laws. H.F. 463, 87 G.A. (Iowa 2017). Unless otherwise noted, this brief's citation to Iowa Code § 321.477 refers to the law as it existed on August 18, 2016, the date of Mr. Werner's stop.

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 following outlines the applicable statutes and traces the development of the law over time. Though the governing statutes have evolved since the time of *Merchants Motor*, none of those legislative developments have bestowed upon the IDOT any authority to enforce speed restrictions.

A. *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.

B. 1939: Department of Public Safety Established and Given Exclusive Enforcement Authority

Then 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)).

C. 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 adopted legislation to grant the State Highway Commission limited police powers. 49th G.A. 177 (Iowa 1941). The 1941 Act expanded the State Highway Commission’s authority by “confer[ing] the authority of peace officer on certain employees of the State Highway Commission in the enforcement of motor vehicle laws relating to the size, weight and load of motor vehicles.” *Id.* (introduction to Act). The legislature granted the State Highway Commission authority

to stop any motor vehicle or trailer on the highways for the purposes of weighing and inspection, to weigh and inspect the same and to enforce the provisions of the motor vehicle laws relating to the size, weight and load of motor vehicles and trailers.

Id. § 1 (codified at Iowa Code T. XIII, Ch. 321, § 321.476 (1946)).

To that end, the legislature further empowered 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.” *Id.* § 2 (codified at Iowa Code T. XIII, Ch. 321, § 321.477 (1946)).

In 1943, the legislature re-enforced the State Highway Commission’s enforcement authority by enacting a new section stating:

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 (Iowa 1943) (codified at Iowa Code § 321.492 (1946)).

D. 1948: Iowa Supreme Court interprets Iowa Code § 321.477

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 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 § 321.477⁶ thus limits Iowa Code § 321.492.

⁶ 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:

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).

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.

E. 1951: Non-substantive Change to Iowa Code § 321.477

Prior to 1951, Iowa Code § 321.477 granted the State Highway Commission authority to “control, direct, and weigh traffic on the highways.” In 1951, the legislature reworded this section to state: “to control and direct traffic and weigh vehicles.” 54th G.A. 458 § 2 (Iowa 1951). The 1951 amendment was part of a bill that added language to Iowa Code § 321.476 stating:

Authority is also hereby granted to subject to weighing and inspection vehicles which have moved from a highway onto private property under circumstances which indicate that the load of the vehicle, if any, is substantially the same as the load which the vehicle carried before moving onto the private property.

54th G.A. 458 § 2 (Iowa 1951); H.F. 458, 54th G.A. (Iowa 1951).

The bill explanation states: “This bill provides for the weighing of a vehicle to determine whether it is overloaded when such vehicle has left the

highway before it could be apprehended.” H.F. 458 Explanation, 54th G.A. (Iowa 1951). Accordingly, the 1951 amendment to Iowa Code § 321.477 was merely intended to remove the language that limited State Highway Commission employees’ authority to investigate weight violations to only violations that occurred on the highway.

F. 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 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.* The IDOT thus 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)).

G. 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.*

H. 1990: Attorney General Opinion regarding Iowa Code § 321.477

In 1990, the Director of the IDOT posed a series 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. 1990 Iowa Op. Att’y Gen. 100, 1990 WL 484921 (1990). The IDOT Director asked if IDOT peace officers are empowered by the general arrest provisions of Iowa Code § 804.7 or limited to the specific arrest powers enumerated in Iowa Code § 321.477. *Id.* at *1.

Citing *Merchants Motor* and *A-1 Disposal*, 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. 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.

2. *Merchants Motor and the Plain Language of Iowa Code § 321.477 Govern this Case*

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 Mr. Werner’s stop.⁷ 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

⁷ 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.

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).⁸

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

⁸ 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.

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).

The recognition in Iowa Code § 801.4(11)(h) that certain IDOT employees may be designated as peace officers does not abrogate the *Merchants Motor* holding. As the district court recognized, 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). So, we find ourselves back at § 321.477, which by its plain language (confirmed by the *Merchants Motor Court*) grants only limited enforcement powers to the IDOT.

This is where the district court went awry: the district court did not acknowledge that § 801.4(11)(h) is limited by § 321.477. This failure led the district court to incorrectly conclude Iowa Code § 801.4(11)(h) authorized IDOT Officer Glade to stop Mr. Werner for speeding. Indeed, the district court’s interpretation of § 801.4(11)(h) would render superfluous § 801.4(11)(h)’s reference to § 321.477. *See Petition of Chapman*, 890 N.W.2d 853, 857 (Iowa 2017) (“[W]e apply the fundamental rule of statutory construction that we should not construe a statute to make any part of it superfluous.”).

The district court also suggested that the definition of “peace officer” in Iowa Code § 321.1(50) authorized IDOT Officer Glade to stop Mr. Werner for speeding. The district court failed to recognize that the *Merchants Motor Court* specifically rejected the argument that the definition of “peace officer” in Iowa Code § 321.1 expands the grant of authority for

IDOT peace officers beyond the scope of Iowa Code § 321.477. 239 Iowa at 892–93.

In sum, *Merchants Motor* and the plain language of Iowa Code § 321.477 govern. Because the IDOT assumed the enforcement authority of the State Highway Commission in 1974 and has been granted no additional enforcement authority for speed violations, the analysis of *Merchants Motor* remains controlling. The Iowa Supreme Court explained in *Merchants Motor* why and how Iowa Code § 321.477 limits the IDOT’s authority and why Iowa Code §§ 321.1, 321.476, and 321.492 are all limited by Iowa Code § 321.477. The district court failed to appreciate the primacy of Iowa Code § 321.477 and the impact of *Merchants Motor*. To uphold the district court’s ruling, this Court would have to ignore not only *Merchants Motor*, but also the plain language of Iowa Code § 321.477 and the opinion of *A-1 Disposal*.

Pursuant to Iowa Code §§ 80.22, 321.2, 321.477, *Merchants Motor Freight*, and *A-1 Disposal*, IDOT Officer Glade did not have authority to stop motorists for violations unrelated to operating authority, registration, size, weight, and load. IDOT Officer Glade thus did not possess authority to stop Mr. Werner on August 18, 2016, for speeding.

III. Iowa Code Chapter 804 Did Not Authorize IDOT Officer Glade's Actions.

As the State recognized, the question presented is “whether DOT MVE officers acting as such are limited by statute in their traffic violation enforcement authority.” (App. 43 (emphasis added)). IDOT Officer Glade was working in his official capacity as an IDOT officer when he stopped Mr. Werner and he used his State-issued equipment to effectuate the stop. Yet the district court alternatively justified IDOT Officer Glade's actions as an exercise of citizen's arrest authority. Iowa Code § 804.9 cannot legitimize the stop of Mr. Werner because IDOT Officer Glade was acting in his official capacity pursuant to an IDOT policy.

1. Plain Language of Chapter 804 Did Not Authorize IDOT Officer Glade's Actions

Iowa Code Chapter 804 differentiates between an arrest by a private person, 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).

IDOT Officer Glade ran afoul of these statutes in two ways. One, IDOT Officer Glade was not acting as a “private person” when he pulled Mr. Werner over for speeding. IDOT Officer Glade was on patrol, acting in his official capacity as an officer of the IDOT. IDOT Officer Glade used State-issued equipment—uniform, badge, radar detector, marked vehicle, flashing overhead lights, and siren—and asserted the authority of the State when he detained and cited Mr. Werner. 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); *cf. 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.

Two, IDOT Officer Glade did not take Mr. Werner before a magistrate or deliver Mr. Werner to a peace officer and accompany the peace officer before the magistrate. IDOT Officer Glade dropped Mr. Werner at the Iowa County Jail and filed a Complaint and Affidavit with the clerk of court. (8/18/16 Complaint). This is a power not granted to private persons, which illustrates that IDOT Officer Glade did not act as a private person. IDOT Officer Glade’s failure to comply with Iowa Code § 804.24 alone invalidates any citizen’s arrest defense.

2. Merchants Motor Rejected Citizen’s Arrest Defense

The citizen’s arrest defense was explicitly rejected by the Iowa Supreme Court in *Merchants Motor* for exactly the reasons above. 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 755.5.⁹ There is not merit in this contention.

32 N.W.2d at 776.

To summarize, *Merchants Motor* rejected the citizen's arrest defense because 1) the State Highway Commission's employees were acting in an official capacity—not as private citizens; 2) the State Highway Commission's employees did not arrest or threaten arrests, which is the only thing authorized by the citizen's arrest statute; and 3) the State Highway Commission's employees were issuing citations, which are not authorized by the citizen's arrest statute.

⁹ 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).

The same is true in this case. IDOT Officer Glade acted in his official capacity and he did not comply with the citizen's arrest statute.

3. State v. Lloyd Does Not Abrogate Merchants Motor

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 Officer Glade never possessed any legal authority to enforce Iowa's speed laws. At no point was IDOT Officer Glade 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 Mr. Werner, and Mr. Atzen, and Mr. Roeder, etc. As recognized in the materials provided to the district court, the IDOT adopted an “internal, administrative policy to allow its motor vehicle enforcement officers to enforce all traffic laws, irrespective of the type of vehicle.” (App. 26-27). *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.”

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.

4. IDOT's Interpretation of Chapter 804 Renders Superfluous Multiple Statutes

If the State is allowed to justify IDOT Officer Glade's 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." *Chapman*, 890 N.W.2d at 857. The procedure advocated by the State 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 State attempts to expand the IDOT’s 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 State thinks it would be good policy for the IDOT to usurp the DPS’s role does not override the governing statutes.

5. Recent Amendment of Iowa Code § 321.477 Demonstrates IDOT Officer Glade Lacked Authority

In the wake of the *Atzen* ruling, the issue of whether the IDOT was acting outside its authority was widely publicized in Iowa.¹⁰ See History of enactment process, 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.¹¹ H.F. 463, 87 G.A. (Iowa 2017). House File 463 amended Iowa Code § 321.477 to state:

¹⁰ See, e.g., Jason Clayworth, Lawsuit seeks refund of 20,000-plus Iowa traffic tickets, 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, 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-can-issue-tickets/305775001/>; Jason Clayworth, Second judge says Iowa DOT can't issue tickets, 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/>.

¹¹ 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

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.

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*

<http://www.desmoinesregister.com/story/news/politics/2017/04/21/lawmakers-grant-dot-one-year-speeding-ticket-authority/305877001/>.

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).¹²
- 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 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.”

¹² 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>

Senator Danielson, Iowa Senate public comment on House File 473 at 03:42:25 (April 4, 2017).¹³

- 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).¹⁴
- 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 do not have carte

¹³ 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>

¹⁴ 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>

blanche to expand it.” Senator Danielson, Iowa Senate public comment on House File 473 at 11:08:35 (April 21, 2017).¹⁵

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, *available at* <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=H-1206>.¹⁶ 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.”

¹⁵ *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>

¹⁶ 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>.

Representative Taylor, Iowa House of Representatives public comment on House File 473 at 05:17:10 (March 27, 2017).¹⁷

- 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).¹⁸
- 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

¹⁷ 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>

¹⁸ 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>

those issues. Senator Breitbach, Iowa Senate public comment on House File 473 at 03:54:30 (April 4, 2017).

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 IDOT Officer Glade’s stop of Mr. Werner.

IV. Suppression Is the Necessary Remedy

Merchants Motor demonstrates courts must enjoin state agents from enforcing statutes when the state agents lack authorization to enforce those statutes. *See* 32 N.W.2d at 777 (“[A]ppellee is not asking for interference with the enforcement of the criminal laws by those authorized to enforce the

same. It merely asks that injunction issue if the [agents] are not authorized to act, and to leave the enforcement in the hands of those charged therewith, under the statutes. That an injunction will issue under such circumstances, see [citations omitted].”). *Merchants Motor* is consistent with the rule in criminal cases that suppression is necessary when state agents violate statutory commands.

Iowa courts have consistently excluded evidence due to statutory violations. Most recently, in *State v. Hellstern*, the Iowa Supreme Court found suppression necessary when the defendant invoked his right to a confidential consultation with his attorney and the law enforcement officer failed to explain the scope of that right, instead denying it. 856 N.W.2d 355, 364 (Iowa 2014). Similarly, in *State v. Lukins*, the Iowa Supreme Court suppressed the results of a Breathalyzer test when law enforcement denied the defendant his statutory right to an independent chemical test. 846 N.W.2d 902, 911 (Iowa 2014). The suppression of evidence due to a statutory violation is not a new rule. *See, e.g., State v. Kjos*, 524 N.W.2d 195, 196 (Iowa 1995) (holding a police officer’s false statement about a defendant’s choice to take a breathalyzer resulted in exclusion of evidence); *State v. McAteer*, 290 N.W.2d 924, 925 (Iowa 1980) (affirming a district court’s suppression of evidence when a detainee was denied her right to call

a family member); *State v. Vietor*, 261 N.W.2d 828, 832 (Iowa 1978) (holding when a detainee’s request to call a lawyer is denied “evidence of his refusal to take a chemical test shall be inadmissible at a later criminal trial”).

Only by suppression can the statutory restriction on the IDOT’s authority be preserved. *Cf. Kjos*, 524 N.W.2d at 196 (“Only [by suppression] can a defendant’s right to refuse a test offered more than two hours after arrest be preserved.”). As the Iowa Supreme Court recognized in *Lukins*, declining to suppress evidence obtained due to illegality would permit officers to act with impunity and would render meaningless the governing statutes. 846 N.W.2d 911. “It would make no sense to provide a lesser remedy.” *State v. Walker*, 804 N.W.2d 284, 296 (Iowa 2011).

Suppression is also necessary under the Fourth Amendment to the United States Constitution and article I, § 8 of the Iowa Constitution. The Fourth Amendment and article I, § 8 forbid unreasonable searches and seizures. It is unreasonable for a state actor to use the accoutrement of state authority to take actions that are forbidden by statute. It is unreasonable for a fleet of IDOT officers to present themselves as official law enforcement officers authorized by the State of Iowa to enforce speed restrictions when in

fact the Iowa Legislature and the Iowa Supreme Court have explicitly commanded that IDOT officers have no such power.

Evidence obtained as a result of IDOT Officer Glade's illegal stop must be suppressed as a remedy for his statutory violation. The purpose of the stop was not to check registration, weight, load, or authority to operate the automobile. The purpose of the stop was to enforce speed laws, a purpose beyond the scope of Iowa Code § 321.477. Therefore, any evidence from the stop in this case must be excluded from trial. Because this prosecution was initiated by an officer with no authority to do so, the prosecution is defective and must be dismissed. To allow this prosecution would be an affront to the separation of powers upon which our constitutional government is founded.

CONCLUSION

IDOT employees' enforcement authority is delineated in and limited by Iowa Code § 321.477 (2016). IDOT Officer Glade violated Iowa Code § 321.477 when, acting in his official capacity, he used his State-issued equipment to stop Mr. Werner for speeding. To remedy the violation of Iowa Code § 321.477, the evidence obtained as a result of IDOT Officer Glade's stop must be suppressed.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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CHART OF RELEVANT STATUTES

<i>Merchants Motor - 1946 Iowa Code</i>		2016 Iowa Code	
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.”

Merchants Motor - 1946 Iowa Code		2016 Iowa Code	
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.”

<i>Merchants Motor - 1946 Iowa Code</i>		2016 Iowa Code	
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. The brief contains 10,565 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 25, 2018, I did serve Defendant-Appellant's Final Brief on Appellant by mailing one copy to:

JEREMY M. WERNER
Defendant-Appellant

 /S/ Gina Messamer

Dated: April 25, 2018
Gina Messamer