DEPARTMENT OF ADMINISTRATIVE SERVICES

IN THE MATTER OF: CARL J. RIECHERS, ELIZABETH RIECHERS, MICHELLE RENEE BULLOCK, LEILA M. SUTCLIFFE, MARY NELSON, SIMON CONWAY, MICHAEL S. VESTLE, KAY LYNN KULA, Petitioners.	**NOTICE OF PETITION OF DECLARATORY ORDER**

NOTICE IS HEREBY GIVEN pursuant to Iowa Code section 17A.9(3) and Iowa Administrative Code rule 11—8.2(17A) that on April 4, 2019, the above-captioned Petitioners filed a Petition for Declaratory Order ("Petition") with the Iowa Department of Administrative Services ("DAS"). Petitioners filed the Petition pursuant to Iowa Code section 8A.504, Iowa Code chapter 17A and Iowa Administrative Code chapters 11—8 and 11—40. Petitioners seek determinations related to the following questions set forth in the Petition:

> []1. Whether DAS, pursuant to the *Behm* Court's holding, has the lawful authority to subject any amount of Iowa Income Taxpayer refunds allegedly owed as a "liability" or a "qualifying debt" or as otherwise characterized by DAS to the Iowa Income Tax Offset Program that has not, first, been made subject to a finding of liability and imposition of civil fines by the Iowa District Courrt pursuant to municipal or county infraction proceedings?
>
> []2. Whether DAS, by the issuance and implementation of Chapter 40 of the Iowa Administrative Code, has wrongfully expanded its powers to include collection and forfeiture of funds owned by persons or entities, but held by state agencies, such as the Iowa Department of Revenue, pursuant to ATE Ordinances in instances in which alleged amounts due and owing have not, first, been liquidated to sums-certain by a Court Judgment entered by the Iowa District Court upon the conclusion of a municipal or county infraction proceeding?
>
> []3. Whether DAS and/or IDOR, have wrongfully financially benefitted from their respective participation in the Iowa Income Tax Offset Program, and financially benefited in amounts that can be reasonably calculated?

See Petition at 3.1-3.3. A complete copy of the Petition is attached to this Notice. Qualifying persons may request intervention pursuant to Iowa Code section 17A.9(4) and Iowa Administrative Code rule 11—8.3.

DATED at Des Moines, Iowa, this 5th day of April, 2019.

IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES

By: _____
Janet E. Phipps, Director

Notice posed via DAS's website and sent via electronic mail to identified interested parties.

Copy sent via electronic mail to Attorneys for Petitioners:
James C. Larew
James.larew@larewlawoffice.com

ADMINISTRATIVE SERVICES DEPARTMENT

Petition by: Carl J. Riechers and Elizabeth Richers, Michelle Renee Bullock, Leila M. Sutcliffe, Mary Nelson, Simon Conway, Michael S. Vestle and Kay Lynn Kula For a Declaratory Order On: Iowa Code Chapter 8A.504 and Chapter 40 of the Iowa Administrative Code Determining that the Department of Administrative Services Should Not Characterize as "Qualifying Debts" and Thereby Offset Certain Amounts Allegedly Owed by Vehicle Owners to Iowa Political Subdivisions Pursuant to Citations Issued Under Automated Traffic Enforcement Ordinances That Have Not Been Subject to Infraction Lawsuits Filed in the Iowa District Court	**PETITION FOR DECLARATORY ORDER**

COME NOW Petitioners **CARL J RIECHERS and ELIZABETH RIECHERS, MICHELLE RENEE BULLOCK, LEILA M SUTCLIFFE, MARY NELSON, SIMON CONWAY, MICHAEL S. VESTLE and KAY LYNN KULA,** by and through their Attorney James C. Larew, pursuant to Iowa Code Chapter 8A.504, Iowa Code Chapter 17A, Iowa Administrative Code Chapter 8, and Iowa Administrative Code Chapter 40, and for their Petition for Declaratory Order, under which no city or county in the State of Iowa may enter into contracts with the Iowa Department of Administrative Services ("IDAS") to seize any amount of money owned by any Vehicle Owner in order to satisfy an alleged debt owed to that city or agency under any Automated Traffic Enforcement (or similar) ordinance that has not, first, been reduced to judgment by an Iowa District Court upon the conclusion of a municipal or county infraction proceeding. In support of the same, Petitioners state as follows:

1. **All relevant facts on which the Order is requested**:

1.1. A number of jurisdictions (cities and at least one county) in Iowa have adopted so-called "Automated Traffic Enforcement" (or "ATE") ordinances under which cameras equipped with radar equipment are used to detect motor vehicles whose operators are alleged to be traveling in excess of speed limits to provide jurisdictional authorities with evidence to support citations. Thereafter, alleged motor Vehicle Owners (and not the operators) are issued Citations under which they are alleged to have violated the ATE ordinances and are, therefore, subjected to potential liabilities for the payments of civil fines and penalties.

1.2. For the most part, municipal and county ATE ordinances utilize schemes under which liabilities are fixed and fines are imposed upon Vehicle Owners *outside* the ambit of municipal and county infraction proceedings filed in the Iowa District Court.

1.3. Under those schemes written Notices of Violations are issued by regular mail to last known addresses of Vehicle Owners who are accused of violating ATE ordinances. Those Notices do not include accurate descriptions of Iowa law under which for any liability to be finally established for the violation of a city or county ordinance, an infraction proceeding must be initiated in the Iowa District Court resulting in a finding of liability and a determination of a fine or penalty in a specified amount.

1.4. In the Notice of Violation process utilized by ATE ordinance enforcements by Iowa jurisdictions, one of a number of possible outcomes result, none of which are in conformity with Iowa law:

1.4.1. For those Vehicle Owners who never receive such mailed Notices, and, therefore, have no opportunity to respond to or to contest them, jurisdictions treat the

absences of responses as defaults and make findings of liabilities and impose civil penalties and fines.

1.4.2. For those Vehicle Owners who receive such mailed Notices but contest them, Administrative Hearings presided over by jurisdiction-appointed Hearing Officers, result in "final" findings of liability and impositions of civil penalties issued by Administrative Hearing Officers, not Iowa District Court judges, utilizing "preponderance of evidence" standards.

1.4.3. For those Vehicle Owners who receive such mailed Notice of Violation documents, but who do not contest them in writing, the jurisdictions treat the non-responses as defaults and issue Notice of Determination documents, under which findings of liabilities are made and civil penalties and fines are imposed.

1.4.4. No infraction lawsuits are filed under ATE ordinances by jurisdictions against Vehicle Owners unless and until Vehicle Owners demand them.

1.5. Most Iowa Vehicle Owners who are issued mailed ATE ordinance Notice of Violation documents (whether received or not) are also Iowa Income Tax Payers.

1.6. Under these schemes thousands of Iowa Vehicle Owners have been alleged by municipal and county jurisdictions to have owed millions of dollars in unpaid civil fines and penalties—even though those amounts have not been adjudicated as valid, due, or owing by any Iowa District Court as the result of an infraction proceeding.

1.7. Without showings that Iowa District Courts have entered judgments against Iowa Vehicle Owners for alleged violations of ATE ordinances, Iowa jurisdictions have entered into contracts with the Iowa Department of Administrative Services under which the jurisdictions have wrongfully claimed that, under Iowa Code section 8A.504, the

alleged fine and penalty amounts are "qualifying debts" owed to those jurisdictions and, therefore, may be offset against Iowa Income Tax refunds owned by those Vehicle Owners.

1.8. DAS, without lawful authority, and upon receiving notice from jurisdictions that certain amounts of fines and penalties are to them under their respective ATE ordinances, often seizes more funds than those specified and holds all of such funds until authorized to receive them.

1.9. Vehicle Owners are sent notices informing them that their funds are being withheld by the State of Iowa due to alleged failures to pay amounts due and owing pursuant to the ATE ordinance (in fact, frequently substantially more funds are being withheld) and they are informed in those notices of a right to request the convening of hearings to contest the seizures of those funds—but those hearing requests are almost always denied by the jurisdictions.

1.10. After often-substantial delays, Iowa State Income Tax refunds are issued to Vehicle Owners, with deductions having been taken from funds held by the Iowa Department of Revenue, for alleged ATE ordinance violations and resulting alleged amounts of civil fines and penalties due and owing none of which liabilities or amounts have been adjudicated by the Iowa District Court.

1.11. Petitioners comprise a representative, but not exclusive, list of Vehicle Owners who have been, and who are, adversely affected by the Iowa Income Tax Offset Program's wrongful use by jurisdictions whose officials, through contractual arrangements with DAS, have collected, or who are attempting to collect, civil fines and penalties, the liabilities for which have never been established by the Iowa District Court following

the conclusion of a civil infraction lawsuit. The wide array of circumstances underlying Petitioners' prayers for relief in this administrative proceeding, include the following:

1.11.1. Petitioners **Carl J. Riechers and Elizabeth A. Riechers** ("Riechers") are residents of Johnson County, Iowa. In a document dated December 11, 2017, issued on behalf of the City by its contract vendor, Municipal Collections, and mailed to the Riechers in an envelope without a dated postmark, captioned, "NOTICE OF UNPAID AUTOMATED TRAFFIC ENFORCEMENT CITATION," in what is described as a "collection action" that the Riechers owe a "debt" of $75.00 and a "late payment penalty" of 25% imposed under Section 61.138 of the Cedar Rapids Municipal Code, Automated Traffic Enforcement, for an alleged violation issued **more than three years ago**, on October 21, 2015, for an alleged incident that occurred at I-380 Northbound, at J Avenue, Lane Three. In fact, the Riechers denied then, and continue to deny today, that the City's ATE Ordinance is lawful and that a violation ever occurred. The Riechers received a "Notice of Offset" dated march 29, 2018, from the City, alleging a right to seize the amount of $187 for the Riechers' funds held by the IDOR for two alleged violations of the City's ATE ordinance. The Riechers requested an in-person hearing to appeal this intended offset action, but the City refused to allow such a hearing to be convened. The City, then, seized the Riechers' income tax refund money. Based on these and related information the Riechers believe that the City's allegation of the speed of their Vehicle is both unsubstantiated and false and that the City's prosecution of the Violation violates their legal and

constitutionally-protected rights; therefore, they refused to pay the fine imposed by the City.

1.11.2. **Petitioner Michelle Bullock** is the owner of a vehicle that the City of Des Moines has alleged was operated in excess of posted speed limits on June 29, 2018, on Lane 1 of East Bound in the 4700 Block of I-235; she denies liability for the same. A document captioned "2nd AND FINAL NOTICE" was "generated" on October 7, 2018 and mailed to her thereafter. Under the terms of that Notice document, on its front page, Ms. Bullock was instructed that, pursuant to the ATE Ordinance, "*the owner of the motor vehicle is liable for payment of a civil fine* if the owner's vehicle enters an intersection or other location...traveling at a speed above the posted limit." The Notice further informed Ms. Bullock that, "[a]s you have failed to pay or contest the Notice of Violation previously issued, *the fine is now due.* Failure to pay the civil fine may subject you to formal collection procedures and to the Iowa Income Tax Offset Program." On the bottom of the front page, the "AMOUNT DUE" is described as "$65.00" and the "DATE DUE" is "IMMEDIATELY." On the back side of the same document, the Notice instructed Ms. Bullock, further, as follows: "Please be advised that you have exhausted all challenge options and *this is a debt due and owing* to the City of Des Moines. *Failure to pay the fine immediately will subject you to formal collection procedures and the Iowa Income Tax Offset Program.* " More recently, in March 2018, Ms. Bullock received an undated postcard without post-mark whose return address is the City of Des Moines, PO Box 1633, Des Moines, Iowa, in which it is alleged that City records indicate that "**the license plate listed**

below (currently or previously registered to you) has an overdue Automated Traffic Enforcement citation." (emphasis in original). The postcard further stated that "This [the postcard] will be the final notice to [Ms. Bullock]. All unpaid accounts after 2/14/2019 will be forwarded to the City's collection agency or the State of Iowa Income Offset Program."

1.11.3. Petitioner **Leila M. Sutcliffe**, now of Winnetka, Illinois, but formerly a native and resident of Iowa, in June of 2018, received a telephone call from a representative of Municipal Collections of America ("MCOA"), who identified herself as a debt collector retained by the City of Cedar Rapids, demanding payment for hundreds of dollars' worth of civil fines and penalties that, the caller alleged, were due and owing due to ATE violations committed by two vehicles in that city between six and eight years earlier (from August 2010 to October 2012): a Dodge and a Hyundai. Ms. Sutcliffe reported to the City's debt collector that she had never owned a Hyundai and that she had never received any citations related to the Dodge. In response MCOA's representative, Account Representative July Clark, produced partial copies of five citation Notice of Violation documents related to the Dodge. Upon her review of the documents she could attest that she was not the driver of the Dodge on those dates; she had no knowledge of the vehicle's speed on those occasions. In each instance, the dated documents showed mailing addresses at residences that Ms. Sutcliffe had not then-lived —explaining why she had never received any such Notices. Account Representative, Judy Clark, on behalf of the City of Cedar Rapids, followed the telephone call with a written demand for payment for the Dodge-related citations, in the cumulative amount of

$687.50. Further, according to the letter demand, late fees would be assessed "for failure to pay in a timely manner per Ordinance." The letter did not reveal that the City's ATE Ordinance had been amended only a few months before—in October 2017—adding a 25% penalty for each "late payment," and making that "payment penalty" retroactive to apply to the citations issued between six and eight years earlier. Further, the documents asserted that, due to the failure of her response to contest the alleged ATE violations six to eight years earlier, it was now too late to contest them. Ms. Sutcliffe has strong family ties to Iowans and envisions a possible return to the state. She believes that she has been placed at financial risk by a debt-collecting process that she believes violates her legal rights and concerning which she has never been afforded a right to appeal unproven allegations.

1.11.4. Petitioner **Mary Nelson** is a resident of Cedar Rapids, Iowa, who is alleged to have violated the City's ATE ordinance on four separate occasions between January 13, 2016 and April 21, 2017. In four separate documents mailed in un-postmarked envelopes, each of them dated December 11, 2017, issued by Municipal Collections of America ("MCOA"), in its identified capacity as a "debt collector for the City, Ms. Nelson was informed that she owed the City underlying debts in the amount of $75.00 for each citation, plus a "late payment penalty of 25%, each assessment at $93.75, or a total of $375, if said amounts were not paid within "45 days of the date of this letter." That provision, City records had shown, had been added so that the City, in turn, could pay its 25% commission to debt collectors. The City's contract with MCOA, which awarded MCOA a 25%

commission on the collection of ATE fees from Vehicle Owners, had not been approved by the City Council until June 12, 2018. Ms. Nelson, in response to the demand letters, questioned the debt collector, the City and officials at DAS as to how a 25% late payment penalty could be assessed against her for alleged violations that had occurred before the ATE Ordinance had been amended, in October 2017, to include the late penalty provision. No answer to her question was provided by any of these entities. Ms. Nelson also questioned each entity as to how the Income Offset Program could be applied to forfeit property owned by her to satisfy alleged debts that included collection fees owed to a private corporation. No answers were provided by any of the entities. On June 6, 2018, DAS's Offset Program that it had seized $457, or one-half of the $843 that the City had demanded, as the State Income Tax refund had been owed to both Ms. Nelson and her husband. In making that report, DAS predicted refund would not be issued for another three weeks, "around the end of the month"—with no explanation as to why such payment would be held that long.

1.11.5. Plaintiff **Simon Conway** is a resident of Polk County, Iowa, and is employed by Iowa-based radio stations to broadcast talk shows hosted by him in the State of Iowa. In an document dated December 11, 2017, issued on behalf of Defendant City of Cedar Rapids, Iowa ("City") by its contract vendor, Defendant Municipal Collections of America, Inc. ("Municipal Collections") and mailed to Mr. Conway on an envelope without a dated postmark, captioned, "NOTICE OF UNPAID AUTOMATED TRAFFIC ENFORCEMENT CITATION," it is alleged in what is described as a "collection action" that Mr. Conway owes a "debt" of

$75.00 and a "late payment penalty" of 25% imposed under Section 61.138 of the Cedar Rapids Municipal Code, Automated Traffic Enforcement (hereafter, sometimes, "ATE"), for an alleged violation issued **nearly four years earlier**, on July 23, 2015, occurring at I-380 Southbound, at J Avenue. In fact, Mr. Conway denied then, and continues to deny, today, that the City's ATE Ordinance is lawful and that he ever violated it. Mr. Conway, believing that the ATE Ordinance violated his constitutional and legal rights, and convinced that the administrative scheme invoked by the City to find Vehicle Owners liable under it to be a sham, did not pay the fine imposed upon him by the Hearing Officer.

1.11.6. Plaintiff **Michael S. Vestle** is a resident of Marion, Linn County, Iowa, where he is a retired attorney at law. In a document dated December 11, 2017, issued on behalf of the City by its contract vendor, Municipal Collections, and mailed to Mr. Vestle in an envelope without a dated postmark, captioned, "NOTICE OF UNPAID AUTOMATED TRAFFIC ENFORCEMENT CITATION," it is alleged, in what is described as a "collection action," that Mr. Vestle owes a "debt" of $75.00 and a "late payment penalty" of 25% imposed under Section 61.138 of the Cedar Rapids Municipal Code, Automated Traffic Enforcement, for an alleged Violation issued **nearly eight years earlier**, on April 4, 2011, at I-380 Southbound, at J. Avenue. In fact, based on information and belief, Mr. Vestle denied nearly seven years ago, and continues to deny, today, that he ever violated the City's ATE Ordinance.

1.11.7. Plaintiff **Kay Lynn Kula** is a resident of Linn County, Iowa. In a series of documents dated December 11, 2017, issued on behalf the City by its contract

vendor, Defendant Municipal Collections, and mailed to Ms. Kula in envelopes without dated postmarks, each of them captioned, "NOTICE OF UNPAID AUTOMATED TRAFFIC ENFORCEMENT CITATION," all of them alleging what are described as "collection actions" under which, it is further alleged that, in each instance, Ms. Kula owes a "debt" of $75.00 and a "late payment penalty" of 25% imposed under Section 61.138 of the Cedar Rapids Municipal Code, Automated Traffic Enforcement for a series of alleged violations occurring over a period of 90 days at which time she had neither control nor custody of the motor vehicle that is alleged to have been involved in those incidents. Unable to pay the growing number of alleged Violation penalties and believing that the City ATE Ordinance scheme—one under which a non-owner, non-user of a Vehicle can be penalized and cannot obtain the assistance of the Cedar Rapids Police Department—she did not pay the imposed fees. The City's Collection Notice threatens the collection of $1350 fees, plus 25% ($337.50) in "late payment fees" for alleged speeding incidents that were never committed by her.

2. **The relevant language of the specific statutes, rules, policies, decisions n and/or orders whose applicability is question and any other relevant law**:

2.1. The Iowa Supreme Court, in *Behm, et al, v City of Cedar Rapids,* No. 16-1031, 2019 Iowa Sup. LEXIS 7 (Jan. 25, 2019), clarified Iowa law and made it expressly clear that, under Iowa Code section 364.22, municipal ATE ordinance violations do not establish liability for a vehicle owner unless and until that city invokes (and proves) a municipal infraction lawsuit in the Iowa District Court. With respect to the City of Cedar Rapids' ATE ordinance, the Iowa Supreme Court stated, in part, as follows:

> *Further, under our interpretation of the [Cedar Rapids ATE] ordinance—notwithstanding what might be inconsistently asserted by various notices in the administrative process—**no liability of any kind attaches to a vehicle owner without the filing of a municipal infraction**. The ordinance contemplates what happens in the event that a person fails to pay the fine or appeal the citation issued under the ordinance. Id. § 61.138(g). In such an event, the City may file a municipal infraction and may seek a fine associated with the municipal infraction "rather than" a fine under the ordinance. Id. We interpret the provision to state that the failure to timely pay or appeal gives the City a choice: file a municipal infraction or abandon the citation (and associated fine) issued under the ordinance. **Thus, no liability of any kind arises until Cedar Rapids files a municipal infraction.***

Behm, 2019 Iowa Sup. LEXIS *83 (emphasis added).

2.2. As a result of this holding, jurisdictions cannot find the recipient of an ATE citation liable for that citation because the recipient has failed to pay, failed to appeal, or failed to request the issuance of a citation. If a Vehicle Owner charged with an ATE Ordinance violation does not voluntarily pay for and admit liability for a citation, a jurisdiction must file an infraction citation before it can commence collection efforts.

2.3. Iowa Code sections 364.22.1-2 (2019) establish that, as a matter of state law, a violation of a municipal ordinance that may subject a person to a civil penalty or fine in the magnitude authorized by ATE ordinances in the described in this Petition, shall be classified as a municipal infraction.

2.4. Iowa Code sections 364.22.4-6 (2019) establish the minimum requirements of any municipal infraction process initiated by a municipality to enforce an alleged violation (infraction) of a municipal ordinance. Those sections require that: an alleged violator be served original notice of a proceeding (by certified mail or by an in-person service by a police officer or in a manner authorized by the Iowa Rules of Civil Procedure); a trial be convened by a magistrate or judge of the Iowa District Court; proof be admitted that is clear, convincing and satisfactory; and a judgment entered against the alleged violator.

2.5. Similarly, Iowa Code sections 331.307.1-2 (2019) establish that, as a matter of state law, a violation of a county ordinance, subject to a civil penalty or fine in the magnitude authorized by ATE ordinances in the described in this Petition, is classified as a county infraction.

2.6. Iowa Code sections 331.307.4-6 (2019) establish the minimum requirements of any county infraction process initiated by a county to enforce an alleged violation (infraction) of a county ordinance. Those sections require that: an alleged violator be served original notice of a proceeding (by certified mail or by an authorized person in a manner provided by the Iowa Rules if Civil Procedure); a trial be convened by a magistrate or judge of the Iowa District Court; proof be admitted that is clear, convincing and satisfactory; and a judgment entered against the alleged violator.

2.7. Whether DAS, under Iowa Administrative Code Chapter 40, can expand the definition of "qualified debts" from that included in the statute, and to include in the agency definition as "qualifiying debt," the following: "any liquidated sum due and owing to the State of Iowa or any state agency which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum." Iowa Admin. Code 40.1(8A).

2.8. A number of municipal and county jurisdictions in the State of Iowa have initiated ATE Ordinances under which Vehicle Owners whose Vehicles are alleged to have been operated in excess of posted speed limits or to have entered intersections against red light indicators are issued citations for having violated those ordinances. While no two of these ordinances are exactly the same, all of them involve the allegation of liabilities and the imposition of civil fees and penalties without the initiation of municipal or

county infraction proceedings, and, therefore, without the issuance of a judgment finding liability or establishing a civil fine or penalty by any magistrate or judge of the Iowa District Court.

2.9. Those ATE municipal and county ATE ordinances that allow for the apparent and wrongful findings of liability and imposition of civil fines and penalties without the use of infraction proceedings and entries of judgments by Iowa District Court judges have included, but have not necessarily been limited to, the following jurisdictions and respective ATE ordinance provisions:

2.9.1. City of Cedar Rapids, Iowa, Municipal Code of Ordinances, Chapter 61.138 (2019);

2.9.2. City of Council Bluffs, Iowa, Municipal Code of Ordinances, Chapter 9.16.055 (2019);

2.9.3. City of Davenport, Iowa, Municipal Code of Ordinances, Chapter 10.16.070 (2019);

2.9.4. City of Des Moines, Iowa, Municipal Code of Ordinances, Chapter 114-243 (2019);

2.9.5. City of Fort Dodge, Iowa, Municipal Code of Ordinances, Chapter 10.60 (2019);

2.9.6. City of Muscatine, Iowa, Municipal Code of Ordinances, Chapter 7-5 (2019);

2.9.7. City of Sioux City, Iowa, Municipal Code of Ordinances, Chapter 10.12.065 (2019);

2.9.8. City of Waterloo, Iowa, Municipal Code of Ordinances, Chapter 6-1-4 (2019);

2.9.9. City of Windsor Heights, Iowa, Municipal Code of Ordinances, Chapter 60.02.08 (2019); and

2.9.10. County of Polk County, Iowa, County Code of Ordinances, Chapter 42 (2019).

2.10. Under Iowa Code chapter 8A.504, the Iowa General Assembly established the Iowa Income Tax Offset Program. Under it, certain "qualified debts" allegedly owed by Iowa Income Tax payers to governmental agencies may be subject to offset processes under property owned by, and, thereby owed to Iowa Income Tax payers, but are in the custody of a state agency, are held and then paid over to the debt-claiming agencies. Iowa Code chapter 8A.504 does not include in its definition of "qualified debts" any alleged liabilities owed by Vehicle Owners to cities or counties under automated traffic enforcement ordinances that have not been adjudicated, first, by the Iowa District Court. In fact, the "qualified debts" defined by the statute appear to contemplate those obligations that persons have agreed-to by contract or those that have been independently adjudicated by a judgment of the Iowa District Court.

2.11. Under Iowa Administrative Code Chapter 40 ("Offset of Debts Owed State Agencies"), the Department of Administrative Services (DAS) may not participate in income tax offset proceedings that would have the effect of collecting unlawful debts. For example, at IAC 11-40.3 (8A), the following administrative rules are set forth:

....

11-40.3 (8A) Participation guidelines

....

40.3(3) Debts legally enforceable. Public agencies may only place debts in the offset program if the debts are legally enforceable and all of the following conditions are satisfied:

a. The debt shall have been established (liquidated) by one of the following means:

(1) Mutual written agreement between the debtor and the public agency;

(2) Alternative procedures authorized by applicable state or federal law with respect to a "qualifying debt" as defined in Iowa Code section 8A.504(1); or

(3) Court proceeding or administrative process which included notice to the debtor and an opportunity for the debtor to contest the amount of the

debt through a contested case procedure under Iowa Code chapter 17A or a substantially equivalent process.

b. ***The debt shall have been reduced to a final judgment*** or final agency determination that is no longer subject to appeal, certiorari, or judicial review or shall have been affirmed through appeal, certiorari, or judicial review.

c. ***The debt shall be in an amount certain that is past due and not subject to any legal prohibition to collection.***

(emphasis added).

2.12. Notwithstanding these provisions within Chapter 40 of the Iowa Administrative Code, DAS has entered into contracts with a number of Iowa jurisdictions under which DAS, working with other state executive departments, such as the Iowa Department of Revenue ("IDOR"), identifies and seizes funds owned by Iowa taxpayers, but allegedly owed to those jurisdictions to pay allegedly-owed ATE Ordinance fees and penalties.

2.13. Under these agreements, DAS, in cooperation with other state executive agencies, seizes amounts of funds owned by Iowa taxpayers that are far in excess of any amount(s) claimed by said jurisdictions, as allegedly owed to them by particular Vehicle Owners, under their respective ATE ordinances; DAS and IDOR retain custody and control of said jurisdiction-claimed funds, along with funds in excess of claimed funds, until after the Vehicle Owners – taxpayers' jurisdiction-demanded funds have been paid in-whole, even though such demanded amounts have never been adjudicated by the Iowa District Court.

2.14. Under Chapter 40 of the Iowa Administrative Code, DAS and IDOR, have financially benefited from these practices that are not authorized by Iowa law. IDOR, by withholding funds owned by, and owed to, taxpayers, generates revenues from interest accruing from those funds while deposited in interest-bearing accounts. DAS assesses a fee of 6% on all taxpayer funds that it seizes and forfeits to the benefit of one or more of the above-listed jurisdictions under the Iowa Income Tax Offset Program.

3. **The questions Petitioners want answered:**

3.1. Whether DAS, pursuant to the *Behm* Court's holding, has the lawful authority to subject any amount of Iowa Income Taxpayer refunds allegedly owed as a "liability" or a "qualifying debt" or as otherwise characterized by DAS to the Iowa Income Tax Offset Program that has not, first, been made subject to a finding of liability and imposition of civil fines by the Iowa District Court pursuant to municipal or county infraction proceedings?

3.2. Whether DAS, by the issuance and implementation of Chapter 40 of the Iowa Administrative Code, has wrongfully expanded its powers to include collection and forfeiture of funds owned by persons or entities, but held by state agencies, such as the Iowa Department of Revenue, pursuant to ATE Ordinances in instances in which alleged amounts due and owing have not, first, been liquidated to sums-certain by a Court Judgment entered by the Iowa District Court upon the conclusion of a municipal or county infraction proceeding?

3.3. Whether DAS and / or IDOR, have wrongfully financially benefitted from their respective participation in the Iowa Income Tax Offset Program, and financially benefited in amounts that can be reasonably calculated?

4. **The answers to the questions desired by the Petitioners and summary of the reasons urged by the Petitioners in support of those answers:**

4.1. DAS, pursuant to the *Behm* Court's decision, has no lawful authority to subject any amount of Iowa Income Taxpayer refunds allegedly owed as a "liability" or a "qualifying debt" or as otherwise characterized by DAS to the Iowa Income Tax Offset

Program that has not, first, been made subject to a finding of liability by the Iowa District Court pursuant to a municipal or county infraction proceeding.

4.2. DAS, by its issuance and implementation of Chapter 40 of the Iowa Administrative Code, has wrongfully expanded its powers (and the definition of a "qualifying debt") to include collection and forfeiture of funds owned by persons or entities, but held by state agencies, such as the Iowa Department of Revenue, pursuant to ATE Ordinances in instances in which alleged amounts due and owing have not, first, been liquidated by a Court Judgment issued by the Iowa District Court upon the conclusion of a municipal or county infraction proceeding.

4.3. DAS and / or IDOR, have wrongfully financially benefitted from their respective participation in the Iowa Income Tax Offset Program, financially benefited in amounts that can be reasonably calculated.

5. **The reasons for requesting the Declaratory Order and disclosures of the Petitioners' interests in the outcome**:

5.1. Petitioners seek a cessation of the unlawful use of the Income Tax Offset Program to all amounts owed to all cities or counties under their respective ATE Ordinances, except to the extent that a city or county can prove that that amount of alleged liability has been established by a Judgment entered by the Iowa District Court pursuant to a municipal or county infraction proceeding because such conduct is contrary to the statutes and constitution of the State of Iowa.

5.2. Petitioners seek refunds of funds, wrongfully seized and forfeited, including their own, and others similarly-situated, both as to past wrongful conduct and an injunction against any future anticipated use of the Program by any jurisdiction with an ATE Ordinance.

5.3. Petitioners have a financial self interest in the outcome of this proceeding—either in the form of seeking refunds from wrongfully-taken property and/or in the form of relief from future efforts by cities, counties and DAS to initiate the wrongful taking of property by state government agencies.

6. **A statement indicating whether the Petitioners are currently a party to another proceeding involving the questions at issue and whether, to the Petitioners' knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity**:

6.1. There is a pending proceeding in the Iowa District Court for Linn County under which one or more Petitioners are currently a party and concerning which one or more claims therein may be affected by the outcome of this proceeding:

6.1.1. *Simon Conway, et al v. City of Cedar Rapids, Iowa, and Municipal Collections of America*, Linn County District Court, Case No. CVCV089449.

6.2. There are pending proceedings in the Iowa District Court for Polk County under which one or more Petitioners are currently a party and concerning which one or more claims therein may be affected by the outcome of this proceeding:

6.2.1. *Francis Livingood, et al v. City of Des Moines, Iowa,* Polk County District Court, Case No. CVCV053512, and

6.2.2. *Reuven Weizberg, et al v. City of Des Moines, Iowa*, Polk County District Court, Case No. CVCV050995.

7. **The names and addresses of other persons, or a description of any class of persons, known by Petitioners to be affected by, or interested in, the questions presented in the Petition:**

7.1. Petitioners do not have the same, but all jurisdictions described in Paragraph 2.8 (as may IDAS, independently) have lists of the names and addresses of Vehicle Owners who have be accused of violating each jurisdiction's respective ATE ordinance, yet who have not had their respective liabilities concerning or amounts of civil fines and penalties owed, if any, determined through the issuances of final judgments issued by the Iowa District Court, yet whose alleged liabilities have been characterized as "qualifying debts" and have been submitted by those jurisdictions to IDAS for forfeiture and collection under the Income Tax Offset Program.

7.1.1. Any of these people who have had their property wrongfully seized and turned over to jurisdictions have an interest in the questions presented as they have an interest in having that money returned, plus legal interest, as the law may allow.

7.1.2. Any of those persons who not yet had their property wrongfully seized, yet, who have been notified that their money may be seized under the Iowa Income Tax Offset Program have an interest in the questions presented as they have an interest in having a determination made that their funds may not be so-seized.

7.2. Plaintiffs and persons described in putative classes as set forth in Petitions at Law in the proceedings set forth in Paragraph 6, above.

8. **Any request by Petitioners for a meeting provided for by rule 8.7(17A)**: Petitioners agree to the convening of such a meeting.

WHEREFORE Petitioners respectfully request that the Department of Administrative Services ("DAS") issue all appropriate Orders declaring that under Iowa Code Chapter 8A.504 and Chapter 40 of the Iowa Administrative Code Determining DAS should not characterize as "qualifying debts" and thereby offset certain amounts allegedly owed by Vehicle Owners to Iowa political subdivisions issued under their respective Automated Traffic Enforcement Ordinances that have not been subject to final Judgments entered by the Iowa District Court upon the conclusion of infraction lawsuits wherein such Vehicle Owners have been found liable for the payment of civil penalties and fines in specified amounts.

WHEREFORE, Petitioners further respectfully request that DAS issue all further Orders to assure all other remedies to which Petitioners and all similarly-situated Vehicle Owners may be entitled under the premises.

WHEREFORE, Petitioners further respectfully request that DAS issue all further Order awarding to Petitioners reasonable attorneys' fees and costs related to the bringing of this action.

Respectfully submitted,

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CORRESPONDENCE TO BE ADDRESSED TO THE ABOVE-NAMED ATTORNEY