IN THE SUPREME COURT OF IOWA

Supreme Court No. 21-1015
Polk County No.: CVCV059435

JAMES A. STODGILL, MATTHEW D. JOHNSON, KIRK E. YENTES,
Plaintiffs,
CHRISTOPHER DETERMAN and ALESHA SMITH,
Appellants/Plaintiffs

vs.

CITY OF WINDSOR HEIGHTS, IOWA, and
MUNICIPAL COLLECTIONS OF AMERICA, INC.
Appellees/Defendants

Appeal from the Iowa District Court of Polk County
The Honorable Heather Lauber, District Court Judge
The Honorable Celeste Gogerty, District Court Judge

FINAL BRIEF OF CITY OF WINDSOR HEIGHTS, IOWA APPELLEE/DEFENDANT

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ROUTING STATEMENT

The above-captioned matter should be routed to the Iowa Court of Appeals, as it presents a matter for the application of existing legal principals and issues appropriate for summary disposition. Iowa R. App. P. 6.1101(3)(a)-(b). The legal matter at issue is the appeal of the district court's granting of summary judgment as to all the Appellants' claims based on well-recognized legal theories concerning statute of limitations and due process rights. Appellants' attempts to suggest the claims are novel should be disregarded. The true questions on appeal are:

1. Whether the district court's February 8, 2021 ruling that Plaintiff Alesha Smith's Counts I-VII claims are time-barred pursuant to applicable statute of limitations was proper.

2. Whether the district court's June 23, 2021 ruling that the City did not violate Plaintiff Alesha Smith's due process rights was proper.

3. Whether the district court's June 23, 2021 ruling that there were no genuine issues of material fact regarding Plaintiff Christopher Determan's claim of a violation of Iowa Code section 614.1 was proper.

4. Whether the district court's June 23, 2021 ruling that the City's ATE Ordinance is not an unlawful personal property tax was proper.

Retention pursuant to Iowa Rule 6.1101(2)(c) requires that the case present "substantial issues of first impression." Iowa R. App. P. 6.1101(2)(c). For Iowa Rule 6.1101(2)(d), this Court may retain a case "presenting fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court." Iowa R. App. P. 6.1101(2)(d). Neither standard has been met in this case. The questions on appeal, outlined above, concern the application of this Court's findings in *Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019) (related to question one above), the balancing test provided in *Mathews v. Eldridge*, 424 U.S. 319 (1976) (question two above), and application of this Court's findings in *Behm v. City of Cedar Rapids*, 922 N.W.2d 524 (Iowa 2019) (questions two and four above). Question three involves the viability of Plaintiff Determan's claim based on the undisputed facts in the record. Therefore, this case should be transferred to the Iowa Court of Appeals because it presents the application of existing legal principles and issues appropriate for summary disposition. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case:

This action concerns the City of Windsor Heights ("City") lawful use of its Automated Traffic Enforcement ("ATE") Ordinance and collection

efforts related to the same. Appellants filed their Petition against the City and the Municipal Collections of America, Inc., (hereinafter "MCOA") on December 19, 2019. (App. 7). The Petition sought an order declaring that the City's actions were barred by a one-year statute of limitations. *Id.* Appellants' Petition further asserted eight different claims: Count I (Violation of Statute of Limitation), II (Unlawful Personal Property Tax Not Authorized by the General Assembly), III (State Law Preemption), IV (Unjust Enrichment), V Conversion, VI (Violations of State Credit Protection Laws), VII (Conspiracy), and VIII (Due Process). *Id.* Finally, Appellants sought certification of four classes of plaintiffs for a class-action suit. *Id.*

The City successfully pursued dispositive motions against each of the Appellants' claims. The City began by filing a Pre-Answer Motion to Dismiss on January 31, 2020 against Plaintiffs James A. Stodgill, Matthew D. Johnson, and Kirk E. Yentes, arguing their claims are barred by the two-year statute of limitations applicable to municipalities. (App. 29). The City also moved to dismiss Count VI in its entirety as to all Appellants, which was then voluntarily dropped by the Appellants. MCOA also moved to dismiss on similar grounds. The Court granted the Defendants' motions in their entirety on March 8, 2020, dismissing all claims by Plaintiffs Johnson,

Stogdill, and Yentes, and Count VI as to the remaining Plaintiffs, Determan and Smith. (App. 71).

The City filed a Partial Motion for Summary Judgment on March 27, 2020 as to all of Appellant Alesha Smith's claims against the City, arguing that her claims were also barred by the statute of limitations. (App. 80). MCOA filed a Motion for Partial Summary Judgment on the same grounds. (App. 118). On February 8, 2021, the Court entered its Order on the Motions for Partial Summary Judgement finding that all of Smith's claims, except for the due process claim in Count VIII, were barred by the two-year statute of limitations applicable to municipalities. (App. 195). The Court concluded that the date of injury on Smith's dismissed claims was the date Smith received the Notice of an Automatic Traffic Enforcement Violation. (*Id.* at 199-200).

Appellants filed a Motion to Reconsider the February 8, 2021 ruling. (App. 202). Appellants requested the district court conclude the seizure of Smith's entire state income tax refund was a distinct injury giving rise to a new claim, and that the Court consider whether the City was required to file a municipal infraction proceeding rather than utilizing the procedure provided in the City's ATE Ordinance. (*Id.*) The Court denied Plaintiffs' motion. (App. 214).

The City filed its final Motion for Summary as to all remaining claims (Smith's due process claim and Determan's claims as to Counts I-V and VII-VIII) on April 23, 2021. (App. 328). On June 23, 2021, the district court issued the final summary judgment ruling in this case, dismissing all the Appellants' remaining claims. (App. 454).

The Appellants filed their Notice of Appeal on July 22, 2021. (App. 498). It is the City's understanding that Stodgill, Johnson, and Yentes do not seek appeal on any of their claims. (App. Brief at 19). It is the City's further understanding that Appellant Determan is not pursuing his claims concerning state law preemption, conversion, conspiracy, unjust enrichment, and due process. (App. Brief at 51, fn 16). Therefore, the facts and arguments surrounding these claims will not be addressed herein.

STATEMENT OF FACTS

During the relevant times of the claims in this case, the City utilized an automated traffic enforcement system that photographed vehicles that failed to obey red lights or speed regulations. Windsor Heights, Iowa, Ordinance 60.02.08. The purpose of the City's ATE Ordinance outlined in the ATE operation policy issued March 1, 2012 was stated as follows:

> It is the policy of the Windsor Heights Police Department to operate Automated Traffic Enforcement (ATE) program . . . for the purpose of efficiently utilizing the resources of the Department; to reduce speeding violations and traffic collisions,

> property damage, personal injuries, and deaths; to reshape the motoring behaviors of the community; and to address neighborhood complaints of flagrant violators.

(App. 353 ¶ 3). The City mailed a notice of any automated traffic citation to the owner of the photographed vehicle. Windsor Heights, Iowa, Ordinance 60.02.08. The notice provided directions for a vehicle owner to contest the citation. *Id.* Failure to contest the citation or voluntarily pay the fine could lead to the City submitting the fine to Iowa's Income Offset Program. *Id.*

The Income Offset Program was operated by the State of Iowa, not by the City. Iowa Code § 8A.504. The State of Iowa, not the City, intercepted an individual's entire tax refund for the collection of outstanding amounts prior to releasing any amounts remaining back to the taxpayer. The State of Iowa was not named as a defendant by the Appellants. (App. 7).

A. Facts Relevant to Alesha Smith.

Appellant Alesha Smith was issued a Notice of Violation for a violation of the ATE Ordinance on March 17, 2017. (App. 354 ¶ 11). The Notice of Violation was issued and mailed to Smith on March 23, 2017. (*Id.* at ¶ 12). The Notice of Violation stated that Smith could request an in person administrative review of the violation by signing the violation notice and mailing it in the enclosed envelope to the Windsor Heights Police Department by the listed due date, which was 30 days later on April 22,

2017. (*Id.* at ¶ 13). It also stated "a failure to pay or contest liability by the due date…will result in this penalty being forwarded to collections to the Iowa Income Tax Offset program." (*Id.*). It also explained "Action may also be taken in state district court." (*Id.*).

Smith alleges in the Petition that she was out of town from April 5, 2017 to April 12, 2017, during which time the Notice of Violation was delivered to her address. (App. at 355 ¶ 14). Despite admitting in her Petition that she returned on April 12, 2017, and the Notice of Violation had already been delivered, Smith did not pay the fine or take any action to contest the liability of the Notice of Violation prior to the deadline of April 22, 2017. (*Id.* at ¶ 15).

On May 1, 2017, Smith was issued a Delinquent Notice of Violation. (*Id.* at ¶ 16). The Delinquent Notice of Violation stated "Failure to pay the civil fine will subject you to formal collection procedures which may include Iowa's Income Offset program." (*Id.* at ¶ 17). It again said "Action may also be taken in state district court." (*Id.*). On May 5, 2017, Smith submitted an administrative hearing request, which was denied as untimely. (*Id.* at ¶ 18).

On February 27, 2018, Smith was sent a Notice of Offset. (*Id.* at ¶ 19). The Notice of Offset stated that Smith's "Iowa state income tax refund for $320.00 is being held because you owe $88.00, plus any additional charges,

to the City of Windsor Heights. This action is authorized by Iowa Code Section 8A.504 which allows setoff of a tax refund for municipal debt." (*Id.* at ¶ 20). The Notice of Offset also advised Smith she had a right to appeal the offset of the amount of debt or the process of the offset, and further stated:

> Upon receipt of your written protest this matter may be scheduled for hearing, and you will be contacted with the date and procedures. DO NOT contact the Department of Administrative Services if you wish to dispute the amount in question, do not believe you owe the money, or believe you have paid the debt. Contact the City of Windsor Heights.

(*Id.* at ¶ 21).

On March 15, 2018, Smith sent a letter indicating that she did not believe she owed the money. (App. at 356 ¶ 22). Despite the Notice of Offset specifically stating "*DO NOT contact the Department of Administrative Services if you wish to dispute the amount in question, do not believe you owe the money, or believe you have paid the debt. Contact the City of Windsor Heights"*, Smith sent her letter to the Department of Administrative Services. (*Id.* at ¶ 23). Smith did not send a letter to Windsor Heights or MCOA. (*Id.*).

Smith received her income tax refund of $232, remaining sum after a reduction of $88.00 for the ATE infraction plus costs through the Offset Program. (*Id.* at ¶ 24).

B. Facts Relevant to Christopher Determan.

Appellant Determan was issued a Notice of Violation for a violation of the ATE Ordinance which occurred May 15, 2018. (App. 354 ¶ 4). The Notice of Violation was issued on May 18, 2018 citing a penalty of $65.00. (*Id.* at ¶ 5). Determan was issued a Second Notice of Violation on June 26, 2018. (*Id.* at ¶ 6).

Determan admitted he never paid the $65.00 penalty assessed for the ATE infraction. (*Id.* at ¶ 7). Determan admitted he was never put into collections for the ATE infraction, and his account was not referred to MCOA. (*Id.* at ¶ 8). Determan's $65.00 penalty for the ATE infraction was never offset through the Offset Program. (*Id.* at ¶ 9). Determan never remitted any payment, nor had his income or tax returns offset through any program, for the ATE infraction referenced in the Petition. (*Id.* at ¶ 10).

LEGAL ARGUMENT

The District Court granted summary judgments in favor of the City on February 8, 2021 and June 23, 2021. (App. 195 and App. 454). Iowa appellate courts review a district court ruling on a motion for summary judgment for the correction of errors at law. *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006).

I. THE DISTRICT COURT PROPERLY FOUND THAT SMITH'S CLAIMS AGAINST THE CITY ARE BARRED BY

THE STATUTE OF LIMITATIONS.

A. Preservation of Error.

The City agrees that error was preserved on the issue of whether Appellant Smith's claims are barred pursuant to the statute of limitations.

B. Smith's Date of Injury Occurred When the ATE Citation was Issued, Not When it Accrued.

The district court was correct in granting summary judgment as to Smith's claims against the City because her claims are barred by the statute of limitations. Iowa Code section 670.5 states:

> Except as provided in section 614.8, a person who claims damages from any municipality . . . for or on account of any wrongful death, loss, or injury within the scope of section 670.2 or section 670.8 or under common law shall commence an action therefor *within two years* after the alleged wrongful death, loss, or injury.

Iowa Code § 670.5 (emphasis added).[1] Section 670.4(2) provides that statutory remedies shall be exclusive. *See Venckus v. City of Iowa City*, 930 N.W.2d 792, 808 (Iowa 2019) (claims arising under the state constitution are subject to the two-year statute of limitations set forth in 670.5). Claims against municipalities must be filed within two years of *injury*, not within two years of the *accrual* of the injury. *Id*. at 809. Finally, claims against municipalities are not subject to tolling by the discovery rule. *Id*.

[1] Smith has not argued that her claims do not fall within Iowa Code section 670.5. (App. Brief at 27).

The district court confirmed that the statute of limitations in this matter is governed by Iowa Code section 670.5. (App. 73-74). The district court correctly ruled that any lawsuit against a municipality must be filed within two years of the date of injury and not the date of the injury's accrual, and there is no tolling by the discovery rule. (*Id.* at 74).

Smith argues that a separate and distinct injury apart from the March 17, 2017 Notice of Violation occurred when her state tax refund was withheld. (App. Brief at 27-28). This argument is without merit. Smith was issued a Notice of Violation of the ATE Ordinance on March 17, 2017. (App. 354 ¶ 11). The Notice of Violation was issued and mailed on March 23, 2017. (*Id.* at ¶ 12). It stated that Smith could request an in person administrative review of the violation by signing the violation notice and mailing it in the enclosed envelope to the Windsor Heights Police Department by the listed due date, which was 30 days later on April 22, 2017. (*Id.* at ¶ 13). It also stated "a failure to pay or contest liability by the due date…**will result in this penalty being forwarded to collections to the Iowa Income Tax Offset program.**" (*Id.*) (emphasis added). Smith describes this language as nothing more than an "initial threat", while admitting this threat in and of itself can be an injury. (App. Brief at 27). Smith then proceeds to argue that the injury did not actually occur until the

Iowa Department of Administrative Services ("DAS") seized her state income tax refund. (*Id.*). Smith, through her own arguments, has described the difference between "injury" and "accrual" pursuant to the holdings in *Venckus.*

The Iowa Supreme Court has recognized the "legislature has placed greater limitations on actions against municipalities compared to actions against the state because municipalities 'operate under greater fiscal constraints.'" *Venckus*, 930 N.W.2d at 809. In *Venckus*, the Court held the limitations period contained in Iowa Code section 670.5 commences on the date of injury and explained the Iowa Municipal Tort Claims Act "contains no term like 'accrues.'" *Id.* at 808; *see also Callahan v. State*, 464 N.W.2d 268, 270 (Iowa 1990) (explaining accrual occurs when a plaintiff discovers they have suffered an injury and affirming the limitations period under the IMTCA commences on the date of injury without regard to when the claim accrues). Section 670.5 does *not* incorporate the common law discovery rule. *Id*.[2] Smith's injury occurred when she was issued the March 2017 notice.

[2] The *Venckus* court was aware of the practical implications of its holding and noted that one consequence is that "an action can be barred before the accrual date if the action was not filed within two years of the date of injury." *Id*. Thus, *Venckus* addresses Smith's arguments as to the City potentially being "cleverly inclined" to send out citations after the two-year statute of limitations. (App. Brief at 34).

Any arguments as to the *administration* of the Offset Program, and not the City's *use* of the Offset Program, are a separate action that have not been properly brought in this litigation.

The City does not administer or run the State's Offset Program. Iowa Code § 8A.504. Any argument that DAS is administering the Offset Program improperly should be aimed at DAS, not the City. Iowa Code 8A.504 sets out the process by which DAS is supposed to apply the Offset Program, which directs them to do exactly what Smith is saying is unlawful:

> h. The collection entity[3] shall, after the public agency has sent notice to the person liable or, if the liability is owing and payable to the clerk of the district court, the collection entity has sent notice to the person liable, set off the amount owed to the agency against any amount which a public agency owes that person. The collection entity shall refund any balance of the amount to the person. The collection entity shall periodically transfer amounts set off to the public agencies entitled to them.

Iowa Code § 8A.504(h). Therefore, any argument that the Offset Program itself was illegal or DAS's ability to seize a taxpayers' total funds was unconstitutional, are not arguments properly brought against the City.

Smith further argues that she could not have brought an action prior to having her tax refund seized, as she would not have had standing. (App.

[3] "Collection entity" is defined in 8A.504(1)(a) as the Department of Administrative Services and any other public agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the public agency.

Brief at 30). This is not correct. A party has standing when they have (1) a specific personal or legal interest in the litigation, and (2) be injuriously affected. *Hawkeye Foodservices Distribution v. Iowa Educators Corp.*, 812 N.W.2d 600, 606 (Iowa 2012). Smith had a personal and legal interest in the Offset Program when she received the Notice of Violation. Additionally, per *Venckus*, her injury had occurred at that time, providing her standing. *Venckus*, 930 N.W.2d at 807-08. Finally, Smith was not required to jump directly to a district court action but could have timely utilized the administrative proceedings detailed in the Notice of Violation. (App. 354 ¶ 13). If unsuccessful in these proceedings, she then could have proceeded with her current action. However, Smith did not do that, forcing the parties to now argue in the abstract as to what could have happened if Smith timely filed this action.

The City maintains that Smith's claims are barred by the statute of limitations as her alleged injury occurred on March 17, 2017, the date the Notice of Violation was issued. (*Id.* at ¶ 12). Here, the Petition was filed on December 19, 2019, well beyond 670.5's two-year statute of limitations. (App. 7). Therefore, the district court properly granted summary judgment in favor of the City.

C. The City is Not Required to File a Municipal Infraction for ATE Violations.

Smith argues that the district court failed to consider or address the City's "failure" to file a municipal infraction proceeding and reduce the amount owed to judgment. (App. Brief at 35). In making this argument, Smith misconstrues the holdings in *Behm v. City of Cedar Rapids*, 922 N.W.2d 524 (Iowa 2019).

In *Behm*, the City of Cedar Rapids' ATE Ordinance provided that a notice would be mailed to vehicle owners within thirty days of the city obtaining the owner's identifying information. *Id.* at 534. The vehicle owner could then contest the citation through an administrative hearing and, upon receiving a decision from that contest, either pay the fine or request that a municipal infraction be filed. *Id.* The *Behm* court was left to determine if the ordinance was preempted, or irreconcilable, with Iowa Code section 364.22. *Id.* at 564. Ultimately, the court found no preemption. *Id.* at 565. The same analysis must occur here.

There are two types of preemption in Iowa, express preemption and implied preemption. *City of Davenport v. Seymour*, 755 N.W.2d 533, 538-39 (Iowa 2008). Express preemption is when the legislature has specifically prohibited local action in the area. *Seymour*, 755 N.W.2d at 538. In express preemption situations the language used by the legislature provides the court with unequivocal guidance of the intent to preempt. *Id.*

Implied preemption, which is something less than express preemption, has two different forms. The first type occurs when the language of an ordinance prohibits an act permitted by statute, or permits an act prohibited by statute. *Id*. This is commonly referred to as "conflict preemption." *Id*. The burden in proving implied preemption by conflict is "stringent." *Id*. In order to prove conflict preemption, a local law must be "irreconcilable" with state law. *Id*. citing *City of Des Moines v. Gruen,* 457 N.W.2d 340, 342 (Iowa 1990). Further, in applying an implied preemption analysis, the court must presume that the municipal ordinance is valid, and "interpret the state law in such a manner as to render it harmonious with the ordinance." *Seymour*, 755 N.W.2d at 539 citing *Iowa Grocery Indus. Ass'n v. City of Des Moines,* 712 N.W.2d 675, 680 (Iowa 2006). "The cumulative result of these principles is that for implied preemption to occur based on conflict with state law, the conflict must be obvious, unavoidable, and not a matter of reasonable debate." *Seymour*, 755 N.W.2d at 539.

The City's ATE Ordinance is not irreconcilable with Iowa Code section 364.22. Section 364.22 states that a city "**may** provide that a violation of an ordinance is a municipal infraction." Iowa Code § 364.22(2) (emphasis added). The City's ATE Ordinance *does not* provide that a violation is a municipal infraction. Windsor Heights, Iowa, Ordinance

60.02.08. Moreover, while Iowa Code section 364.22(6) outlines what is to occur in a municipal infraction proceeding, it **does not** require that a city allow for or partake in a municipal infraction proceeding to collect a fine. Iowa Code § 364.22(6).

Smith cites to the following language in *Behm* to argue her point:

> 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, 922 N.W.2d at 564. The *Behm* Court is not saying that 364.22 requires a city to either proceed with a municipal infraction or abandon the citation. *Id.* at 564-65. Instead, it is saying that, pursuant to the City of Cedar Rapids' ordinance, the City of Cedar Rapids was left with this choice. *Id.* Other cities are not required to hem themselves in to the two options the City of Cedar Rapids left itself. As long as a city's ordinance is not irreconcilable with 364.22, it may offer itself other paths for enforcement.

Here, though the City had the *option* to file a municipal infraction pursuant to Iowa Code section 364.22—this was not the City's exclusive remedy to enforce ATE violations. (App. Brief at 16-17) (outlining the ATE Ordinance in effect as of Smith's violation). The City's ATE Ordinance provided alternative methods for enforcement of ATE violations and

collection of penalties resulting in such violations. (*Id.*; App. 354 ¶ 13). In fact, the Notice of Violation issued to Smith states that a civil infraction *may* be requested to be filed in district court. (*Id.*). The Notice of Violation also provides the option for the person receiving the Notice to request that a civil infraction be filed instead of an administrative hearing. (*Id.*). The City had two options to choose from—file a municipal infraction or proceed pursuant to its ATE Ordinance. Smith also had the option to request that a municipal infraction be filed.

Finally, as the City is not required to file a municipal infraction pursuant to 364.22, Smith's arguments related to section 614.1(1) requiring municipal infractions to be filed within a one-year statute of limitations is equally without merit. For these reasons, the district court's dismissal of Smith's claims against the City should be affirmed.

II. THE DISTRICT COURT PROPERLY DISMISSED SMITH'S DUE PROCESS CLAIM.

A. Preservation of Error.

The City agrees that error was preserved on the issue of whether Appellant Smith's due process claim was without merit.

B. Smith Received Proper Notice and an Opportunity to be Heard.

The Iowa Due Process Clause mandates that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. 1, § 9. Similarly, the United States Constitution's Due Process Clause states, "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

"The requirements of procedural due process are simple and well established: (1) notice; and (2) a meaningful opportunity to be heard." *Blumenthal Inv. Trusts v. City of W. Des Moines*, 636 N.W.2d 255, 264 (Iowa 2001). Iowa has adopted the federal courts' balancing test in assessing what process is due. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The Court considers the following three factors to determine what process is due: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail. *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 145 (Iowa 2013), citing *Mathews*, 424 U.S. at 335. "No particular procedure violates [due process] merely because another method may seem fairer or wiser." *Bowers v. Polk Cty. Bd. of Supervisors*, 638

N.W.2d 682, 691 (Iowa 2002) quoting from 16B Am.Jur.2d Constitutional Law § 909, at 500 (1998).

A municipality's use of ATE and its process offered does not automatically offend procedural due process. *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 214-15 (Iowa 2018). Moreover, an ATE Ordinance that places the burden on a vehicle owner to request a hearing is still consistent with adequate due process. *Behm*, 922 N.W.2d at 569. This is because "the amount at stake [in ATE violations] is relatively small, and the burden of requesting a hearing is not heavy." *Id*. The mere violation of a statute does not give rise to a due process violation, as the statute at issue may provide more process than is constitutionally required. *Id*. If an aggrieved party received proper notice and an opportunity to be heard, but fails to take advantage of those opportunities, the claimed illegality does not necessarily give rise to a due process violation. *Weizberg*, 923 N.W.2d at 214–15.

Smith makes three principal arguments in regard to her procedural due process claim. (App. Brief at 45). First, she argues that it was a violation of due process to use the Offset Program to seize private funds owned by her because the City had no lawful claim over the funds. (*Id.*). Second, Smith argues that the seizure of funds in excess of the amount owed through the

Offset Program is a violation of due process. (*Id.*). Third, Smith argues the City's failure to provide an opportunity for her to contest the amount of debt to be offset through a contested case procedure equivalent to that provided pursuant to Iowa Code 17A denied her the opportunity for her to be heard in violation of Iowa Code 8A.504(2)(f), Iowa Administrative Code 11-chapter 40, and the procedural due process under the Iowa Constitution. (*Id.*).

The undisputed evidence demonstrates that Smith was provided with multiple notices of the ATE offset procedure, and multiple opportunities to be heard. (App. 354-55 ¶¶ 11-24). Smith was issued a Notice of Violation for an alleged violation of the ATE Ordinance. (*Id.* at 354 ¶ 11). The Notice of Violation was mailed to Smith on March 23, 2017. (*Id.* at ¶ 12). The Notice of Violation stated that Smith could request an in person administrative review of the violation by signing the violation notice and mailing it in the enclosed envelope to the Windsor Heights Police Department by the listed due date, which was 30 days later on April 22, 2017. (*Id.* at ¶ 13). The Notice of Violation also stated "a failure to pay or contest liability by the due date…will result in this penalty being forwarded to collections to the Iowa Income Tax Offset program." (*Id.*).

Smith relies on the argument that she was out of town from April 5, 2017 to April 12, 2017. (*Id.* at 355 ¶ 14). However, Smith returned on April

12, 2017 and the Notice of Violation had already been delivered to her address. (*Id.* at ¶ 15). Nonetheless, Smith did not pay the fine or take any action to contest the liability of the Notice of Violation prior to the due date of April 22, 2017. (*Id.*). Because Smith did nothing, she was issued a Delinquent Notice of Violation on May 1, 2017. (*Id.* at ¶ 16). The Delinquent Notice of Violation stated "Failure to pay the civil fine will subject you to formal collection procedures which may include Iowa's Income Offset program." (*Id.* at ¶ 17).

On May 5, 2017, Smith submitted an administrative hearing request, which was late and therefore denied as untimely. (*Id.* at ¶ 18). As noted above, her administrative hearing request was due by April 22, 2017. (App. 354 ¶ 13). On February 27, 2018, Smith was sent a Notice of Offset. (App. 355 ¶ 19). The Notice of Offset stated that Smith's "Iowa state income tax refund for $320.00 is being held because you owe $88.00, plus any additional charges, to the City of Windsor Heights." (*Id.* at ¶ 20). The Notice of Offset also advised Smith she had a right to contest the Offset and advised Smith that she could also contest the validity of the Offset ***Process*** to DAS. (*Id.* at ¶ 21). The Notice of Offset included the following:

> DO NOT contact the Department of Administrative Services if you wish to dispute the amount in question, do not believe you owe the money, or believe you have paid the debt. Contact the City of Windsor Heights.

(*Id.*). On March 15, 2018, Smith sent a letter to DAS indicating that she did not believe she owed the money. (App. 356 ¶ 22). Smith did not send a letter or protest of the Offset to Windsor Heights or MCOA. (*Id.* at ¶ 23).

Plainly, Smith received multiple notices from the City related to her ATE infraction, and the application the Offset Program. Smith failed to timely and appropriately take advantage of the multiple opportunities to contest the ATE fine and the application of the Offset Program. The City is not liable for Smith's failure to properly utilize its appeal process, or failure to request a hearing, and properly afforded Smith due process.

Smith's second due process argument is that even if the City has the authority to use the Offset Program to acquire funds for the ATE fines, it is a violation of due process to stop the payment of state income tax refunds in excess of the amount owed. In other words, Smith claims the City should not have held any amount over $88.00 for any period of time. As argued *supra*, in section I(B), the City does not administer or run the State's Offset Program. Therefore, arguments concerning DAS's ability to stop the payment of state income tax refunds should be directed at the State, not the City.

Smith's third due process argument was, at the time she filed her Resistance to the City's Motion for Summary Judgment, that the City

violated due process because it failed to provide an opportunity for her to contest the amount of debt to be offset through a contested case procedure equivalent to that provided pursuant to Iowa Code 17A, in violation of Iowa Code 8A.504(2)(f), Iowa Administrative Code 11-chapter 40, and the procedural due process under the Iowa Constitution. Smith's third claim also fails. (5/10/21 Resistance at 13-14). Smith, seemingly accepting the district court's ruling that 8A.504 controlled over its parallel regulation, which was not consistent with the statute, now shifts her arguments to focus more on information supplied to her in a call with MCOA. (App. Brief at 43-45; App. 463-64).

First, to address Smith's previous arguments, the obligation to apply the procedures set forth in 17A only applies to "public agencies subject to 17A." Iowa Code § 8A.504(2)(f). "Agencies" that are subject to 17A are defined as "each board, commission, department, officer or other administrative office or unit of the state." Iowa Code § 17A.2(1). The City of Windsor Heights *is not* a state agency. It is a municipality, which is a unit of local government, not an agency of the state.

Because the City is not "a public agency subject to 17A" the Offset Program procedures only require the City to provide Smith "an opportunity to contest the liability." Iowa Code § 8A.504(2)(f). Smith was afforded

ample opportunities to contest liability. Moreover, the Iowa Supreme Court has found that an ATE Ordinance which places the burden on a vehicle owner to request a hearing is consistent with adequate due process. *Behm*, 922 N.W.2d at 569.

Despite admitting she received the Notice of Violation, Smith failed to request a hearing before the deadline provided on the notice. (App. 355 ¶ 18). In February 2018 Smith received a Notice of Offset. (*Id.* at ¶ 19). The Notice advised Smith, in great detail, about her options in appealing the offset amount, or the process of the offset. (*Id.* at ¶¶ 20-21). Smith again failed to comply with the terms of the notice and sent a letter to DAS contesting the amount owed, instead of sending it to the City Police Department or MCOA, despite explicit directions contained in the Notice. (*Id.* at ¶ 21). Smith points to a call made to MCOA where she was allegedly told she was responsible for the debt regardless of her circumstances. (App. Brief at 45). Again, Smith fails to read the basic instructions of the Notice of Offset. (App. 354-56, App. 393). The Notice of Offset explicitly states that an individual should call MCOA if they had questions as to "the **amount**" owed or "**why** you owe the money." (*Id.*) (emphasis added). If Smith wanted to contest the offset, the Notice of Violation clearly stated a **written notice of appeal** should be filed with MCOA or the Windsor Heights Police

Department. (*Id.*). Smith offers only excuses as to her own failures to follow directions.

Procedural due process only requires (1) adequate notice; and (2) a meaningful opportunity to be heard. *Blumenthal Inv. Trusts*, 636 N.W.2d at 264. Smith's whole argument can be distilled down to the general theme that she believes there were much better or fairer ways to ensure her due process of law. Even if that is so, this type of argument falls short of establishing a due process violation. *Bowers*, 638 N.W.2d at 691 ("No particular procedure violates [due process] merely because another method may seem fairer or wiser"). For these reasons, the district court found the City gave Smith adequate notice and a meaningful opportunity to be heard and its ruling should be affirmed.

III. THE DISTRICT COURT PROPERLY GRANTED THE CITY'S MOTION FOR SUMMARY JUDGMENT AS TO DETERMAN'S STATUTE OF LIMITATIONS CLAIM.

A. Preservation of Error.

The City agrees that error was preserved on the issue of whether Appellant Determan's statute of limitations claim against the City had merit.

B. No Collection Efforts were Taken Against Determan.

Determan argues that the City attempted to bring a collection action against him through the issuance of a Notice of Violation more than a year after his alleged violation, which he claims is beyond the statute of limitation period set in Iowa Code section 614.1. (App. Brief at 52). First, statute of limitations is an affirmative defense which if not asserted is waived. *See Pride v. Peterson*, 173 N.W.2d 549, 554 (Iowa 1970). The failure to file a claim within the statute of limitations does not impose liability on the claimant, it merely affords a defendant an affirmative defense to the claim.

Determan's arguments relate to Iowa Code section 614.1, which concerns the filing of municipal infractions. Iowa Code § 614.1. Though the City could have chosen to file a municipal infraction against Determan for the ATE Violation, the City instead chose to utilize remedies available to it pursuant to the City's ATE Ordinance. Therefore, the statute of limitations provided by Iowa Code section 614.1 is inapplicable.

Finally, and perhaps most importantly, Determan's claims that collection actions were brought against him "more than a year after the infraction" are erroneous. Determan's violation of the ATE Ordinance occurred on May 15, 2018. (App. 354 ¶ 4). He was sent a Notice of Violation on May 18, 2018, and a Second Notice of Violation on June 26, 2018. (*Id.* at ¶¶ 5-6). No other collection efforts were ever taken against

Determan, he never paid the fine, his account was not referred to MCOA or another collection agency, and he was not referred to the Offset Program. (*Id.* at ¶¶ 7-10). Moreover, the City disclaimed its right to proceed with any actions related to Determan's Notice of Violation in a May 14, 2021 affidavit signed by Dave Burgess, the City's mayor at that time. (App. 452). The district court, correctly, found that this demonstrated the City's inability to act against Determan. (App. 474-75). Determan's arguments that legal threats remain despite the affidavit are baseless hypotheticals of possible future harms that do not exist at this time. (App. Brief at 53). As Appellants themselves argue, advisory opinions are not proper, and therefore Determan's hypotheticals should be disregarded. (App. Brief at 32) citing *Iowa Citizens for Cmty. Improvement & Food & Water Watch v. State*, 962 N.W.2d 780, 791 (Iowa 2021). All the City's collection efforts took place within one-year of the violation, and Determan's statute of limitations claim fails as a matter of law. (App. 475).

C. The Purpose of the ATE Ordinance is Public Safety, not Revenue Generation.

Determan claims, without any factual support, that the ATE ordinance is a revenue-generating personal property tax imposed in a manner inconsistent with the City's police powers. (App. Brief at 55). Notably, Determan admits he never paid the fine, was never put in collections, and

was never put in the Offset Program. (App. 354 ¶¶ 7-10). Even if the ATE was an unlawful tax, which it was not, Determan never sustained any harm or damages. (*Id.*). Determan's claim is not ripe for adjudication as he never suffered damages or paid this penalty to the City. Determan therefore lacks standing to pursue this argument in the present matter. *Rush v. Reynolds*, 946 N.W.2d 543 (Table), at *4 (Iowa Ct. App. 2020) (detailing Iowa's standing inquiry). Furthermore, a putative plaintiff does not have standing to represent a class of individuals if they did not suffer the harm themselves. *Weizberg*, 923 N.W.2d at 221. As Determan's allegations are merely hypothetical, they are not "concrete and actual, or immanent" and, therefore, he lacks standing to pursue this claim. *Rush*, 946 N.W.2d at *4.

Furthermore, there is no evidence to support the allegations that the ATE ordinance is an unlawful tax. A tax is "a charge to pay the cost of government without regard to special benefits conferred. In other words, taxes are for the primary purpose of raising revenue." *Home Builders Ass'n of Greater Des Moines v. City of West Des Moines,* 644 N.W.2d 339, 346 (Iowa 2002) (internal citation and quotation omitted).

The primary purpose of the ATE ordinance was not to raise revenue. The purpose of the ordinance as stated by Windsor Heights was to be "efficiently utilizing the resources of the Department; to reduce speeding

violations and traffic collisions, property damage, personal injuries, and deaths; to reshape the motoring behaviors of the community; and to address neighborhood complaints of flagrant violators." (App. 353 ¶ 3). These issues of police power and public safety are legitimate goals for a city to pursue through traffic regulation. *Behm*, 922 N.W.2d at 553. In other words, the City's ATE Ordinance imposed a *penalty* on vehicle owners whose vehicles violated the ordinance, not a *tax*, and Determan has no proof otherwise.

IV. CONCLUSION

The district court's granting of summary judgment as to Smith and Determan's claims should be affirmed. Smith's claims were properly dismissed as she filed her petition after the two-year statutes of limitations, and the City did not violate her due process rights since she was provided with adequate notice an opportunity to be heard. Determan's claims are equally without merit and lack standing as he never paid any money to the City, the City never collected any money from him, and he was never subject to the Offset Program.

REQUEST FOR ORAL ARGUMENT

Counsel for Appellee City of Windsor Heights respectfully requests to be heard in oral argument upon submission of this case. If Iowa Courts are closed to in-person proceedings due to the ongoing COVID-19 pandemic,

then counsel for Appellee respectfully requests to be heard via telephonic or virtual oral arguments.

COST CERTIFICATE

I certify that the actual cost of printing this brief was $0.00.

CERTIFICATE OF COMPLIANCE

This Brief, filed on January 31, 2022, complies with the typeface and type-volume requirements of Iowa R. App. P. 6.903 because the Brief has been prepared in a proportionally spaced typeface using Times New Roman type in 14 font size, and contains 6,976 words, excluding the parts exempted by Iowa R. App. P. 6.903(1)(g)(1).

CERTIFICATE OF FILING

The undersigned hereby certifies that on the 31st day of January, 2022, Appellee electronically filed this Brief with the Clerk of the Iowa Supreme Court, 1111 E. Court Ave., Des Moines, Iowa 50319.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 31st day of January, 2022, a copy of the Appellee's Brief was served upon all parties to the above cause by electronically filing and serving by EDMS a copy to each of the attorneys or parties of record herein as set forth below:

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