

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 15-1661
(Polk County No. EQCE077368)

KELLI JO GRIFFIN, Petitioner-Appellant

vs.

PAUL PATE, in his official capacity as the Secretary of the State of Iowa,
and
Denise Fraise, in her official capacity as the County Auditor of Lee
County, Iowa,
Respondents-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR
POLK COUNTY
THE HONORABLE ARTHUR GAMBLE PRESIDING

BRIEF OF AMICUS CURIAE, IOWA VETERANS
In Support of Petitioner-Appellant

/s/ Joseph C. Glazebrook

JOSEPH C. GLAZEBROOK, AT0010193
GLAZEBROOK, MOE, & HURD LLP
118 SE 4th Ave, Suite 101
Des Moines, IA 50309
Phone: (515) 259.1110
Fax: (515) 259.1112
joseph@glazebrookmoe.com

ATTORNEY FOR AMICUS CURIAE

CERTIFICATE OF FILING

I, Joseph Glazebrook, hereby certify that I did file this brief with the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa using electronic filing on the ninth day of December, 2015.

/s/ Joseph C. Glazebrook
JOSEPH C. GLAZEBROOK AT0010193
GLAZEBROOK, MOE, & HURD LLP.
118 SE 4th Ave, Suite 101
Des Moines, IA 50309
Phone: (515) 259.1110
Fax: (515) 259.1112
joseph@glazebrookmoe.com
ATTORNEY FOR AMICUS CURIAE

CERTIFICATE OF SERVICE

I, Joseph Glazebrook, hereby certify that I served a copy of the attached brief on all other parties to this appeal by transmitting the document, electronically, via the electronic filing system, to all parties of record on this ninth day of December, 2015.

Attorney for State of Iowa:

Iowa Attorney General's Office
Criminal Appeals Division
Hoover State Office Bldg., 2nd Fl.
1305 E. Walnut Street
Des Moines, IA 50319

/s/ Joseph C. Glazebrook
JOSEPH C. GLAZEBROOK, AT0010193
GLAZEBROOK, MOE, & HURD LLP.
118 SE 4th Ave, Suite 101
Des Moines, IA 50309
Phone: (515) 259.1110
Fax: (515) 259.1112
joseph@glazebrookmoe.com
ATTORNEY FOR AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

This brief is presented by Iowa veterans who have lost their right to vote by virtue of non-violent felony convictions. This brief will highlight the perspectives of two such veterans but applies with equal force to any other person similarly situated. For clarity, there is no legal entity or large organization behind the filing of this brief. On the contrary, it is filed by individual veterans whose perspective is applicable to hundreds, if not thousands, of other Iowa veterans who have experienced confusion, frustration, and embarrassment regarding their right to vote.

As will be made clear, veterans have been disproportionately involved in our criminal justice system for a number of reasons. Moreover, the protection of their rights is very important given the sacrifices they have made to protect those very rights for others. The issue of felon disenfranchisement is very important for this community because the ongoing deprivation of fundamental rights is anathema to the values our country was founded upon. Those who have sacrificed so much should, at the very least, be given the utmost consideration when deciding which classes of persons the government may restrict from participation in our democracy. In the end, it is clear that Amicus has a “unique perspective or information that will assist this Court in assessing the ramifications of its decision,” and as such, Amicus’s brief should be considered as the Court engages in its thoughtful consideration of this matter. Iowa R. App. P. 6.906(4)(a)(3).

ARGUMENT

Felon disenfranchisement, with origins in segregation and disempowering minority racial groups, particularly disempowers and negatively impacts veterans with little or no violent criminal history. Iowa, with some of the harshest laws on felon disenfranchisement and also one of the most vacillating felon disenfranchisement histories has created a scheme in which citizens convicted of crimes do not know their suffrage rights and, in many cases, may have lost them. Many veterans who have fought for our country have lost their right to vote or, at least to some extent, have been rendered confused about their right to vote. Our society has become increasingly aware that veterans are a vulnerable group as many suffer from a variety of conditions as a result of their service, most notably, Post-Traumatic Stress Disorder (PTSD). Many veterans lack adequate medical and mental healthcare, leading to a statistically increased likelihood to commit crimes.¹

Iowa's current voter disenfranchisement scheme consists of the executive branch treating those convicted of a felony as having committed an "infamous crime" under Iowa Const. Art. II § 5. *See Chiodo v. Schultz*, 846 N.W.2d 845, 849 (Iowa 2014). Despite the ruling in *Schultz* and the emergence of a nascent test to determine which crimes constitute "infamous" ones, the executive branch persists on its bright line

¹ David Wood, *Combat Veterans with PTSD, Anger Issues More likely to Commit Crimes: New Report*, October 9, 2012 (available at http://www.huffingtonpost.com/2012/10/09/veterans-ptsd-crime-report_n_1951338.html).

treatment of felons as infamous criminals, as was made clear in its arguments before the district court and before this Court.

To illustrate the effects of this practice, we introduce Jason Orent and Andy Hartman. Both are veterans and otherwise upstanding citizens who have suffered unnecessary grief due to Iowa's disenfranchisement scheme. Their stories clearly demonstrate how Iowa's disenfranchisement scheme can silence those that should have a right to participate in the political process.

Jason Orent is 46 and as the Director of the Iowa Office of Consumer Affairs, is active in the government and society. Orent committed a felony OWI third offense in 1996 and discharged that sentence in 1998. After paying his fines, restitution, serving time in jail, completing appropriate treatment for his crime, successfully discharging his probation, and demonstrating a clean record since his conviction, Orent has shown himself to be a valuable and contributing member of our society. Orent had his voting rights restored by the former Governor, Governor Vilsack, but Orent believes his voting rights were revoked by Governor Branstad's 2011 Executive Order.² Orent believes he was barred from polls. This confusion continues to haunt him. The competing practices of different governors has caused inconsistency and unfairness, in addition to this confusion.

² Exec. Order 70, Executive Orders of Terry E. Branstad (2011).

Arthur (Andy) Hartman is 65 and works as a ring man and a mason. He served during the Vietnam War, working in artillery in the demilitarized zone. He was on the ground and engaged in the fighting and defending the United States' national interests. In 2009 Hartman was convicted for nonviolent drug charges relating to the possession of Marijuana with the intent to distribute. He was sentenced to prison on his class D felony convictions. He was paroled in 2010 and discharged his sentence in 2011 after Governor Branstad issued the 2011 Executive Order.³ Had this occurred a year earlier, his right to vote would have been restored by then existing executive order. However, because of the 2011 executive order, he has now lost his right to vote in Iowa, indefinitely.

Hartman, like other disenfranchised veterans, wants his right to vote, but has been stripped of his democratic voice and ability to influence government policies. Hartman has lived in Iowa for over 30 years. In forty-seven other states Hartman would be allowed to vote now. However, because he lives in Iowa, he may never be allowed to vote again. *See Chiodo*, 846 N.W.2d at 863 (Mansfield, J. concurring specially) (“By permanently disenfranchising convicted felons, Iowa puts itself in a small minority of three states.”).

Iowa is one of only three states that disenfranchise felons permanently, regardless of the offense and regardless of whether any time was served. *Id.* Iowa

³ *Id.*

deprives felons, even felons with only one drug-related non-violent offense, from their civil right of suffrage potentially forever. Not only is felon disenfranchisement unfair; these policies are extraordinarily confusing, both for citizens that have had convictions discharged and for administrators who are supposed to enforce these policies. In 2012, according to the AP, twelve votes were wrongly rejected specifically for this reason, due to the confusing shift in policies.⁴ Not only are voters confused-- administrators misunderstand who is and is not allowed to vote.

Certain minority groups tend to be disproportionately affected by voter disenfranchisement laws. Laws that target felons also disproportionately target racial minorities and veterans. The former has been the focus of much attention and rightly so.⁵ However, the very same concern applies with similar force regarding the disproportionate disenfranchisement of veterans. This is simply because veterans unfortunately find themselves more frequently involved in the criminal justice system

⁴ Ryan J. Foley, *Iowa finds 12 votes were wrongly rejected in 2012*, Associated Press April 11, 2014 (Available at http://www.salon.com/2014/04/11/iowa_finds_12_votes_were_wrongly_rejected_in_2012/).

⁵ See eg. Christopher Uggen, Jeff Manza & Angela Behrens, *Felony Voting Rights and the Disenfranchisement of African Americans*, *Souls: A Critical Journal of Black Politics, Culture, and Society* 5:47 (2003) (available at http://www.socsci.umn.edu/~uggen/Uggen_Manza_Behrens_04_Souls.pdf).

than their non-veteran counterparts.⁶ This stems from a variety of reasons beyond the individual veteran's control such as higher incidences of PTSD or from the stress associated with being a part of active military conflicts that sometimes involve multiple life-disrupting deployments overseas.⁷

The extent of the PTSD problem cannot be easily understated. In 2008, the Rand Corporation found that numerous studies with varying methodologies had yielded a remarkably consistent finding that, "regardless of the sample, measurement tool, or time of assessment, combat duty and being wounded were consistently associated with positive screens for PTSD."⁸ It is also clear that those suffering from PTSD and related ailments abuse alcohol and drugs more frequently.⁹ For this

⁶ SWORDS TO PLOWSHARES INSTITUTE FOR VETERAN POLICY, *Veterans and Criminal Justice: A Review of the Literature*, 1 (August 2011) (Available at: <https://www.swords-to-plowshares.org/wp-content/uploads/Veterans-and-Criminal-Justic-Literature-Review.pdf>); See also Margaret E. Noonan and Christopher J. Mumola, *Bureau of Justice Statistics Special Report: Veterans in State and Federal Prison, 2004* (May 2007) (Available at: <http://www.bjs.gov/content/pub/pdf/vsfp04.pdf>).

⁷ Terri Tanielian and Lisa H. Jaycox, *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*, at 5-9 (Rand Corporation, 2008) (available at: http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG720.pdf).

⁸ *Id.* at 51-52.

⁹ Andrew J. Saxon, MD, *Returning Veterans with Addictions*, *Psychiatric Times* (June 2011) (Available at: <http://www.psychiatrictimes.com/military-mental-health/returning-veterans-addictions>)

reason, veterans are at an increased risk of being charged with a drug or alcohol felony, subjecting them to the potentially permanent loss of their voting rights.

This is certainly consistent with the convictions pertaining to Orent and Hartman. Both were non-violent felony convictions related to substance abuse that occurred after military service was completed. Although not every case shares these features, all too often veterans find themselves in this very position. The unfortunate ramification from higher levels of involvement in the criminal justice system is that at least in States like Iowa, veterans are more vulnerable to disenfranchisement. It is unlikely the framers of the Iowa Constitution sought to disempower those who have fought and sacrificed for the rights we take as granted as Iowans. As this Court undertakes its analysis of Art. II § 5 of the Iowa Constitution, it should give careful consideration to the challenges and obstacles veterans already face as a result of their sacrifice to the nation and to the state of Iowa.

CONCLUSION

WHEREFORE, for the reasons stated herein, Amicus Curiae Iowa Veterans respectfully requests this Court reverse the decision of the District Court and define infamous crime in a narrow fashion so as to avoid the injustice that so many veterans face, and grant any other relief in the interest of justice.

Respectfully submitted,

/s/ Joseph C. Glazebrook

JOSEPH C. GLAZEBROOK, AT0010193

GLAZEBROOK, MOE, & HURD LLP.

118 SE 4th Ave, Suite 101

Des Moines, IA 50309

Phone: (515) 259.1110

Fax: (515) 259.1112

joseph@glazebrookmoe.com

ATTORNEY AMICUS CURIAE

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/s/ Joseph C. Glazebrook
JOSEPH C. GLAZEBROOK, AT0010193
GLAZEBROOK, MOE, & HURD LLP.
118 SE 4th Ave, Suite 101
Des Moines, IA 50309
Phone: (515) 259.1110
Fax: (515) 259.1112
joseph@glazebrookmoe.com
ATTORNEY AMICUS CURIAE

CERTIFICATE OF COST

I hereby certify that the costs of printing the brief of Amicus Curiae was \$0.00,
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/s/ Joseph C. Glazebrook
JOSEPH C. GLAZEBROOK, AT0010193
GLAZEBROOK, MOE, & HURD LLP.
118 SE 4th Ave, Suite 101
Des Moines, IA 50309
Phone: (515) 259.1110
Fax: (515) 259.1112
joseph@glazebrookmoe.com
ATTORNEY AMICUS CURIAE