

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

State of Iowa, ex rel. Gary R. Allison as
County Attorney for Muscatine County, Iowa
Plaintiff,

vs.

Thomas J. Vilsack,
Governor of the State of Iowa,
Defendant.

No. EQCV 016165

PETITION FOR ORDER
OF MANDAMUS

FILED
2005 JUL 13 PM 2:21
MUSCATINE IOWA

COMES NOW the State of Iowa, by Muscatine County Attorney Gary R. Allison and petitions this Court for an order of mandamus.

I. Parties

- 1. Plaintiff Gary R. Allison is the duly elected County Attorney in and for Muscatine County, Iowa. This action is brought by Plaintiff in the public interest.
- 2. Defendant Thomas J. Vilsack is the duly elected Governor of the State of Iowa.

II. Applicable law

- 3. Iowa law provides that persons convicted of a felony offense may not register to vote or be a candidate for public office. Iowa Code §§ 39.16 and 48A.6(1). A person with a disqualifying conviction may register to vote and be a candidate for public office if the person has received a restoration of rights from the Governor or President of the United States. Iowa Code § 48A.6(1). Restoration of rights is a form of executive clemency.
- 4. Article IV, Section 16 of the Iowa Constitution places in the Governor the authority to exercise executive clemency:

The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the general assembly at its next meeting, when the general assembly shall either grant a pardon,

commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the general assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reasons therefor, and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

5. Iowa law contains several regulations which individually and jointly serve to place substantial limitations on the Governor's authority to grant executive clemency. Iowa Code chapter 914 contains procedures by which persons convicted of a criminal offense, other than a class "A" felony, may make application for executive clemency. The law provides for investigation on the application and the fitness of the offender to receive clemency. The law further provides for the board of parole to make recommendation to the Governor for action. Upon completion of said process the Governor, "shall respond to all recommendations made by the board of parole within ninety days of the receipt of the recommendation." Iowa Code § 914.4. The Governor is required to, "state whether or not the recommendation will be granted and shall specifically set out the reasons for such action." *Id.*

6. Upon the grant of executive clemency documents evidencing the action of the Governor shall be prepared. Iowa Code § 914.6. In the case of restoration of rights, "one copy of the executive instrument shall be delivered to the person and one copy to the clerk of court where the judgment is of record. A list of the restorations of rights of citizenship issued by the governor shall be delivered to the state registrar of voters at least once each month."

7. The Victim Rights Act, Iowa Code chapter 915 contains several other limitations and regulations pertaining to executive clemency. Iowa Code § 915.19 places a specific notification requirement on the Governor in certain cases:

Prior to the governor granting a reprieve, pardon, or commutation to an offender convicted of a violent crime, the governor shall notify a registered victim that the victim's offender has applied for a reprieve, pardon, or commutation. The governor shall notify a

registered victim regarding the application not less than forty-five days prior to issuing a decision on the application. The governor shall inform the victim that the victim may submit a written opinion concerning the application.

III. Facts

8. On Friday, June 17, 2005, Governor Vilsack publicly announced his intention to grant by executive order¹ restoration of rights to all persons who have completed their sentence for a felony offense whether that sentence was imposed in the form of probation or a sentence of imprisonment which has resulted in a discharge by the board of parole. Said executive order would apply not to individual offenders but to a class of offenders. Said executive order would be available from the Governor's office but would not be filed with the felony judgment for each offender. Governor Vilsack announced this order would be issued July 4, 2005.

9. Governor Vilsack's announced order would restore rights to convicted persons without those persons making application for executive clemency, without review and recommendation by the board of parole, without specific reasons for the grant or denial of the application by the Governor and without notification and comment by victims of violent crimes.

IV. Request for relief

10. Governor Vilsack has a legal duty by reason of his office to comply with the requirements of law described above prior to granting executive clemency.

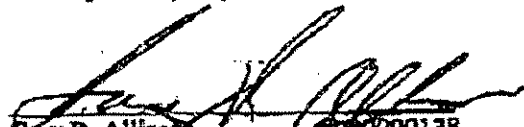
11. There is not another plain, speedy and adequate remedy in the ordinary course of the law to address the wrongful act planned by the defendant.


12. Based upon the Governor's statements on June 17, 2005, it would constitute an act of futility to demand that the Governor not enter the executive order described above.

¹ On or about June 20, 2005, the Governor's official website << <http://www.governor.state.ia.us/> >> stated that the proposed order would be Executive Order No. 42.

13. It is contrary to the public interest for the Governor to grant executive clemency contrary to the duly enacted limitations on his constitutional authority contained within Iowa Code chapter 914 and 915. Plaintiff respectfully requests this Court order the Governor that no executive order for restoration of rights issue without full compliance with the limitations on his clemency powers as described above. Plaintiff further requests this Court order that any such order entered by the Governor be void and for all further equitable relief as the Court finds proper.

WHEREFORE, the State of Iowa respectfully requests the order of mandamus be granted as described above.


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