

July 7, 2005

## **EXECUTIVE CLEMENCY UNDER THE IOWA CONSTITUTION**

The Iowa Constitution, Article IV, § 5, directly disenfranchises people who have been convicted of felonies or aggravated misdemeanors. A constitutional amendment to change this provision would require passage by a majority of both houses of the legislature in two successive sessions, ratification by a majority of the voters, and implementing legislation.

The Iowa Constitution, Article IV, § 16, also gives the governor broad powers of executive clemency, however. The governor has the power to grant reprieves, commutations, and pardons, and to restore the rights of citizenship, including the right to hold public office and to vote. The Legislature cannot restrict the governor's clemency power, and the courts may not review the exercise of this power.

In a celebration of liberty and equality to mark Independence Day, Governor Vilsack signed Executive Order Number 42. This order restores the rights to vote and to hold office to the estimated 80,000 citizens of Iowa who have fully served their sentences on felony or aggravated misdemeanor convictions. In addition, the order establishes a mechanism for ongoing restorations as others complete their sentences.<sup>1</sup> There exists no constitutional or statutory bar to the governor's issuance of this order; to the contrary, any substantive limitation on this power would create a constitutional problem.

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<sup>1</sup> Exec. Order No. 42 (Iowa, July 4, 2005), available at [http://www.governor.state.ia.us/legal/41\\_45/EO\\_42.pdf](http://www.governor.state.ia.us/legal/41_45/EO_42.pdf).

The Iowa state constitution authorizes the governor to grant clemency. Article IV, § 16, reads in part:

The governor shall have the power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law.

Iowa Const. art. IV, § 16. The Governor's power is unqualified in the text, except by those "regulations . . . provided by law." In explaining how the two parts of the clause interact, the Office of the State Attorney General instructs that regulations are permissible so long as they do not suspend, restrict, or limit the governor's exclusive discretionary authority to grant clemency. Op. Iowa Att'y Gen. 125 (1940). The Iowa Code reinforces this rule and makes clear that the governor's powers include restoration of the rights of citizenship: "The power of the governor under the constitution to grant a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or *restoration of rights of citizenship* shall not be impaired." Iowa Code § 914.1 (emphasis added). The Iowa Supreme Court has also explicitly recognized this aspect of the pardon power. *Dean v. Haubrich*, 83 N.W.2d 451, 453-56 (Iowa 1957) (reviewing historical and constitutional sources of the right to restore the suffrage as part of the pardon power).

The Iowa Supreme Court has interpreted the clemency clause to prevent legislative incursions into the governor's power. In the leading case, *Slater v. Olson*, 299 N.W. 879 (Iowa 1941), the supreme court invalidated a statute forbidding people with felony convictions to hold civil service positions, even after they had received full pardons from the governor. The court held that the statute encroached upon the governor's constitutional powers, which extend not only to relief from the punishment a law inflicts for a crime, but also to the collateral consequences of a conviction. *Id.* at 881. Like the denial of the right

to hold a civil service job, the denial of the right to vote is a collateral consequence of conviction within the governor's power to undo. Even *Slater*'s dissent—trying, in general, to restrict the scope of a pardon's effects—recognizes that re-enfranchisement is at the core of the pardoning power. *Slater*, 299 N.W. at 882 (“The pardon, when granted, unquestionably restores the convicted person to the rights of his previous citizenship, that of suffrage . . . .”) (Wennerstrum, J. dissenting).

The state supreme court has likewise protected the governor's power from judicial usurpations. Iowa case law is unambiguous in protecting the Governor's exclusive pardoning power, with which “neither the judiciary nor the legislature may interfere.” *Slater*, 299 N.W. at 881 (Iowa 1941). *See also, e.g., Klouda v. Sixth Judicial Dist. Dept. of Correctional Services*, 642 N.W.2d 255 (Iowa 2002) (concluding that there is “no encroachment on judicial power” when the governor exercises clemency) (internal citation omitted); *State v. Wright*, 202 N.W.2d 72, 76 (Iowa 1972) (distinguishing permissible judicially granted probation from the Governor's exclusive parole powers); *Dawson v. Sisk*, 4 N.W.2d 272 (Iowa 1942) (holding that only the governor, not the judiciary, may suspend sentences, else courts would “directly violate . . . constitutional provisions and usurp . . . the prerogatives of the executive department”).

Moreover, the governor is free to act independently of the board of parole, as the legislation governing the board makes clear. The board has no authority to grant or deny clemency, and the governor may choose to solicit its recommendation or not. Iowa Code §§ 914.2 (“[A] person convicted of a criminal offense has the right to make application to the board of parole for recommendation *or to the governor* for a reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of rights of

citizenship at any time following the conviction.”), 914.3(2) (“The board of parole shall, *upon request of the governor*, take charge of all correspondence in reference to an application filed with the governor and shall, after careful investigation, provide the governor with the board’s advice and recommendation concerning any person for whom the board has not previously issued a recommendation.”) ( *emphases added*). The legislation delineating the duties of the board of parole thus respects that the state constitution reposes in the governor independent power over clemency decisions.

This clemency power is broad enough to encompass the executive order Governor Vilsack has announced. The order rests on his views that “ex-offenders that vote are less likely to re-offend” and “restoration of the right to vote is an important aspect of reintegrating offenders in society to become law-abiding and productive citizens.”<sup>2</sup> The goal of rehabilitation he articulates is a traditional part of the clemency determination. Democracy can only benefit by his use of the clemency power to enfranchise thousands of people who are living, working, and paying taxes in Iowa’s communities after their completion of criminal sentences.

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