SUPREME COURT NO. 15-1661
POLK COUNTY CASE NO. EQCE 077368

IN THE SUPREME COURT OF IOWA

KELLI JO GRIFFIN,
Petitioner-Appellant,

vs.

PAUL PATE, in his official capacities as **IOWA SECRETARY OF STATE**, and
DENISE FRAISE, in her official capacities as **LEE COUNTY AUDITOR,**
Respondents-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HONORABLE ARTHUR E. GAMBLE

APPENDIX

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. TERRY BRANSTAD, in his official capacities as the Governor of the State of Iowa, MATT SCHULTZ, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. _____ **PETITION FOR DECLARATORY JUDGMENT AND SUPPLEMENTAL INJUNCTIVE AND MANDAMUS RELIEF**

COMES NOW Petitioner, Kelli Jo Griffin, by and through her attorneys, Rita Bettis and Randall Wilson of the American Civil Liberties Union of Iowa Foundation, and Julie A. Ebenstein and Dale Ho of the Voting Rights Project of the American Civil Liberties Union, and prays for a declaratory judgment that Mrs. Griffin is an eligible elector, as well as injunctive and mandamus relief requiring that Mrs. Griffin be allowed to register and vote in Iowa, and in support thereof states the following:

PARTIES

1. Plaintiff KELLI JO GRIFFIN ("Mrs. Griffin"), age 41, is a lifelong Iowan and current resident of Montrose, Iowa, in Lee County. She is married and has four children, including her stepdaughter. Their ages are 1, 3, 5, and 8. Mrs. Griffin is a home-maker and stay-at-home mother. In addition, she is active in her community, and volunteers at a child abuse prevention center, women's drug treatment center, and is a speaker to groups of women who, like her, are domestic violence and rape survivors. Mrs. Griffin was tried by jury and acquitted of perjury in March 2014 after having been charged as

part of the state's two-year voter fraud investigation championed by Iowa Secretary of State Matt Schultz, who issued a statewide press release touting the filing of criminal charges against Mrs. Griffin on January 22, 2014. Mrs. Griffin, after successfully completing her term of probation, discharging her sentence, and turning her life around after a past nonviolent drug conviction, believed she was eligible to vote. On November 5, 2013, she registered to vote and cast a ballot in an uncontested city election held in Montrose, Iowa.

2. Defendant, the Honorable Terry Branstad, is Governor of the State of Iowa. As Governor, his office is vested with the Supreme Executive power of the State and he is Chief Magistrate responsible for the faithful execution of the laws. Iowa Const. Art. IV Sect. 1 & Sect. 9. Governor Branstad has the power to grant reprieves, commutations and pardons, after conviction, for all offenses, which power includes the restoration of the rights of citizenship to an Iowa elector made ineligible by virtue of a conviction for an infamous crime. Iowa Const. Art. IV Sect. 16. *State ex rel. Dean v. Haubrich*, 248 Iowa 978, 982-87, 83 N.W.2d 451, 4553-56 (Iowa 1957). On January 14, 2011, the Governor Signed Executive Order Number 70, to revoke Governor Vilsack's Executive Order Number 42, dated July 4, 2005. Executive Order Number 42 "utilized a process that granted the restoration of citizenship rights automatically." Under Executive Order Number 42, there was an 81 percent reduction in the number of people disenfranchised in Iowa and an estimated 100,000 Iowans regained the right to vote.[1] The press release issued from the Office of the Governor to announce the signing of Executive Order 70 provided that, "Executive Order 70 rescinded Gov. Vilsack's executive order that

[1] Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010*, THE SENTENCING PROJECT 12 (2010).

established an automatic process that gave voting rights and the right to hold public office to felons and those who committed aggravated misdemeanors. This was a major priority of Secretary of State Matt Schultz." Under Governor Branstad's policy, which reinstated a process of individualized executive review, individuals must complete a multiple-step paper application, which includes the requirement that the applicant provide a copy of their Iowa Criminal History Record from the Iowa Division of Criminal Investigation that costs $15.00, and wait months for restoration applications to be processed. The Governor maintains the record of applicants for Executive Clemency, a list of persons whose rights have been restored by the Governor's Office, and provides that list to the Secretary of State for use in the administration of elections.

3. Defendant, the Honorable Matt Schultz, is Secretary of State of the State of Iowa. As Secretary of State, Matt Schultz also serves as State Registrar of Voters. Iowa Code §47.7 (2014). As Registrar, the Secretary of State is responsible for the preparation, preservation, and maintenance of voter registration records, as well as the preparation of precinct election registers for elections. Iowa Code §47.7(1) (2014). The Registrar is responsible for maintaining a single, computerized statewide voter registration file, coordinated with other agency databases, "including . . . judicial records of convicted felons." Iowa Code §47.7(2)(a). As such, the Secretary of State maintains a felon voter file. The file contains a list of persons whose names have been provided by the Iowa district court clerks as having been convicted of a felony, as well as a list of persons whose names have been provided by the Iowa Governor's Office as having had their citizenship rights restored. In 2013-2014, the Secretary of State allocated approximately $240,000.00 of federal Help America Vote Act grant money to pay the salary of Iowa Division of Criminal Investigation agents to investigate instances of alleged fraudulent

voting by persons with felony convictions. A total of 68 persons were investigated and referred to county attorneys for criminal prosecution; charges were brought in 16 cases, including against Mrs. Griffin.

4. Defendant Denise Fraise is the County Auditor for Lee County, Iowa. In this capacity, Denise Fraise is the county commissioner of elections. Iowa Code § 47.2 (2014). Auditor Fraise conducts voter registration and elections for Lee County. Auditor Fraise administered the November 2013 city election in Montrose, Iowa, in which the Petitioner voted. As she testified during Mrs. Griffin's trial, Auditor Fraise identified Mrs. Griffin's ballot and, after running her information through the voter registration program at the Lee County Auditor's Office, determined that Mrs. Griffin was ineligible because of her prior felony conviction, resulting in charges and prosecution for perjury, for which Mrs. Griffin was acquitted by a jury.

JURISDICTION AND VENUE

5. This action seeks a declaratory judgment and supplemental relief pursuant to Iowa Rule of Civil Procedure 1.1101 and 1.1106. This Court has jurisdiction over this matter pursuant to Iowa Code §602.6101 (2014).

6. Venue is proper in this district pursuant to Iowa Code §616.3(2) (2014) because part of the cause arose in Polk County. Two of the three defendants are state officials with primary offices at the State Capital in Polk County.

STATEMENT OF THE CASE

7. This case presents a purely legal question, to wit: whether Mrs. Griffin's prior felony conviction for delivery of less than 100 grams of cocaine—which sentence she has fully discharged—is an "infamous crime" as used in the Iowa Constitution, Art. II, sect. 5, to disqualify citizens from voting.

OPERATIVE FACTS

8. In 2001, Mrs. Griffin, then Kelli Jo Saylor, was convicted of possession of ethyl ether in violation of Iowa Code §124.401(4)(c) (2001), a class D felony. She received a suspended prison sentence and a term of probation, which she discharged in 2006. Following the completion of her sentence, she received an automatic restoration of her voting rights by operation of Governor Vilsack's July 4, 2005 Executive Order 42. The automatic restoration process, created on July 4, 2005 by Governor Vilsack's Executive Order Number 42, remained in effect until January 14, 2011.
9. On January 7, 2008, Mrs. Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, in violation of §124.401(1)(c)(2)(b) (2008), a Class C felony. She was given a suspended sentence and was placed on probation for 5 years. She successfully discharged her sentence on January 7, 2013.
10. On January 14, 2011, Governor Branstad signed Executive Order Number 70, which revoked Executive Order 42, replacing the system of automatic voting rights restoration with an application process for people with felony convictions seeking restoration of their eligibility to vote. The current application process costs $15 to complete an official DCI background check, requires considerable paperwork, and takes up to six months to complete.
11. On November 5, 2013, Mrs. Griffin registered and voted in an uncontested local election at the community center in Montrose, Iowa. During her subsequent criminal trial, she testified that she brought her four children to the polling site with her in order to teach them about voting. Her eight year old had recently learned about voting in school and Mrs. Griffin wanted to show her daughter how the process worked.

12. On December 16, 2013, the State charged Mrs. Griffin with Perjury, a class D felony, for registering to vote and voting in the November 5, 2013 municipal election, in violation of Iowa Code §720.2 (2014). Mrs. Griffin pleaded not guilty.
13. On March 19-20, 2014, Mrs. Griffin was tried by jury in Lee County.
14. At trial, Mrs. Griffin testified that in 2008, she was advised by her defense attorney that her citizenship rights would be restored by the Governor's Office through the automatic restoration process upon completion of her criminal sentence, including any period of probation or parole. That information was accurate at the time it was provided to Mrs. Griffin, and consistent with her experience of automatic restoration following her prior 2001 nonviolent felony drug conviction.
15. Mrs. Griffin was not informed that she was ineligible to vote until she was contacted by a Division of Criminal Investigation agent.
16. At her trial, Mrs. Griffin also testified as to her experience as a survivor of sexual and physical abuse that led to her prior substance abuse and addiction, as well as her subsequent recovery. She testified about turning her life around, and her current life as an involved stay-at-home mom and spouse, who is an active volunteer and advocate in her community for children, survivors of abuse, and people in recovery for addiction.
17. On March 20, 2014, the jury acquitted Mrs. Griffin.
18. Mrs. Griffin now wishes to register to vote and vote in elections that impact her, her family, and her community without fear of criminal prosecution.
19. Iowa Code §48A.6 (2014) provides that "A person who has been convicted of a felony as defined in §701.7, or convicted of an offense classified as a felony under federal law" is "disqualified from registering to vote and from voting."

20. Iowa Code §39.3(8) (2014) provides that "*'Infamous crime'* means a felony as defined in §701.7 or an offense classified as a felony under federal law."
21. Iowa Code §48A.14 (2014) provides for challenges to a registered voter's registration on the grounds that "The challenged registrant has been convicted of a felony, and the registrant's voting rights have not been restored."
22. Iowa Code §49.79 (2014) provides that a precinct official has "the duty to challenge any person offering to vote whom the official knows or suspects is not duly qualified" and that a person may be challenged if "The challenged person has been convicted of a felony, and the person's voting rights have not been restored."
23. Iowa Code §48A.30(1)(d) (2014) provides that the voter registration of a registered voter shall be cancelled if "The clerk of the district court, or the United States attorney, or the state registrar sends notice of the registered voter's conviction of a felony as defined in §701.7, or conviction of an offense classified as a felony under federal law. The clerk of the district court shall send notice of a felony conviction to the state registrar of voters. The registrar shall determine in which county the felon is registered to vote, if any, and shall notify the county commissioner of registration for that county of the felony conviction."
24. Iowa's current voter registration form requires that registrants aver under penalty of perjury "I have not been convicted of a felony (or I have received a restoration of rights)."
25. Similarly, Iowa Code §43.18(9) (2014) requires a candidate for public office to aver to a statement on the affidavit of candidacy "A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a

felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States."

26. Iowa Code §57.1(2)(c) (2014) provides that it is grounds to contest an election "That prior to the election the incumbent had been duly convicted of a felony, as defined in §701.7, and that the judgment had not been reversed, annulled, or set aside, nor the incumbent pardoned or restored to the rights of citizenship by the governor under chapter 914, at the time of the election."
27. State legislative districts and federal Congressional districts are drawn by the non-partisan Legislative Services Agency (LSA) on the basis of population alone, as determined by Federal Decennial Census. Iowa Code §42.4 (2014). Those censuses on which congressional districts are apportioned do not exclude people with criminal convictions from the population numbers. In turn, Iowa's state and federal political districts already include people convicted of felonies, and restoring the right of persons with a completed felony conviction to vote in the upcoming election would not disrupt fair political representation among Iowa state and federal districts as determined by LSA.
28. On October 16, 2014, the Department of Corrections responded to an open records request filed by the ACLU by providing names of people who were in its custody who since January 14, 2011 have discharged a felony offense in Iowa, who have not subsequently been convicted of a felony offense. The Department provided names of 14,350 people, including Mrs. Griffin.
29. As of January 14, 2014, in the three years since Executive Order 70, the Governor's Office had only restored the voting rights of 40 Iowans.

COUNT I

COMPLETE DEPRIVATION OF CONSTITUTIONAL RIGHT TO VOTE

30. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

31. The Iowa Constitution assures the right of suffrage for every citizen of the United States who is 21 years of age[2] and an Iowa resident according to the terms laid out by law. Iowa Const. Art. II. Sec. 1. In the same Article, it disqualifies as eligible electors two classes of persons: those adjudged mentally incompetent to vote and those "convicted of any infamous crime." Iowa Const. Art. II Sec. 5.

32. In the recent case *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (2014), Chief Justice Cady, writing for the plurality decision, summarized the jurisprudence in Iowa governing the right of citizens to vote:

> Voting is a fundamental right in Iowa, indeed the nation. *See Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live. *See Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535, 11 L. Ed. 2d 481, 492 (1964). The right to vote is found at the heart of representative government and is "preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S. Ct. 1362, 1381, 12 L. Ed. 2d 506, 527 (1964); *accord Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S. Ct. 1064, 1071, 30 L. Ed. 220, 226 (1866).

Chiodo, 846 N.W. 2d at 848 (Cady, C. J., for the plurality).

33. The *Chiodo* case overturned three cases dating back nearly 100 years that incorrectly and over-broadly interpreted the Iowa Constitution's Infamous Crimes Clause as

[2] The Twenty-Sixth Amendment to the U.S. Constitution extends the right to vote to those age eighteen or older. U.S. Const. Amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.")

disqualifying persons to vote and hold public office for a conviction of "any crime punishable by imprisonment in the penitentiary." *Id.* (citing *State ex Rel Dean v. Haubrich,* 248 Iowa 978, 980, 83 N.W.2d 451, 452 (1957); *accord Blodgett v. Clarke*, 177 Iowa 575, 578, 159 N.W.243, 244 (1916) (per curiam); *and Flannagan v. Jepson,* 177 Iowa 393, 399-400, 158 N.W. 641, 643 (1916)).

34. In *Chiodo,* a five justice majority agreed that aggravated misdemeanors, which are punishable by a maximum two years imprisonment in the penitentiary, are not infamous crimes that disqualify a person from voting and holding office. *Chiodo*, 846 N.W. 2d at 856 (Cady, C. J., for the plurality), 863 (Mansfield, J., for the special concurrence).

35. The three-justice plurality determined that the term "infamous crime" was distinct in meaning from the term "felony," and that not all felonies are necessarily infamous crimes. *Id.* at 856-57. The text, placement, and legislative history of the Infamous Crimes Clause suggest that Iowa's constitutional founders intended it as a regulatory (rather than punitive) measure to ensure the integrity of the electoral process. *Id.* at 855-56.

36. The nascent test outlined by the plurality in *Chiodo* requires that in order to be an infamous crime, an offense must meet each of three criteria: (1) The offense is "particularly serious," which the plurality and special concurrence agree excludes any crime classified as a misdemeanor; (2) The nature of the offense "reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections," meaning that the crime must have an actual "nexus to preserving the integrity of the election process"; (3) Finally, the plurality indicates that the crime must involve an element of "specific criminal intent."[3] *Id.* at 856-57.

[3] Although the test put forward by the *Chiodo* plurality opinion is most simply articulated in three parts, it could be argued that the Court intended the third element, requiring specific

37. All three requirements of an infamous crime must be met in order to deprive a person of their right as an elector. *See id.* at 856 ("We only conclude that the crime must be classified as particularly serious, and it must be a crime that reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections. We can decide this case by using the first part of this nascent definition.")

38. In the same case, a four justice majority (the plurality and the dissent, authored by Justice Wiggins), agreed that the Iowa Constitution deprived the legislature of the power to define "infamous crime" as used in Art. II, section 5. *Chiodo*, at 852 (Cady, C.J., for the plurality)("The legislature may not add to or subtract from the voter qualifications under the constitution")(citing *Coggeshall v. City of Des Moines*, 138 Iowa 730, 737, 117 N.W. 309, 311 (1908); 855 (Cady, C.J., for the plurality)("[T]he drafters at our 1857 constitutional convention intended to deprive the legislature of the power to define infamous crimes."); 864 (Wiggins, J., dissenting)("First, I agree with the plurality that the legislature cannot write a constitutional definition of 'infamous crime' by its enactment of Iowa Code §39.3(8) (2014). The Legislature cannot disqualify a voter by defining 'infamous crime' under our constitutional scheme because the constitution defines who is and who is not an eligible elector.")(also citing *Coggeshall*, 138 Iowa at 744.)

39. However, the plurality left for another day the task of articulating a more precise test to determine which felonies are infamous crimes under the Iowa Constitution, and specifically declined to decide whether the legislative definition of "infamous crime"

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criminal intent, is a subcategory of the first or second requirements, that the crime be particularly serious or that the offender have a specific criminal intent that goes toward the requirement that the crime have a nexus to voting and elections. The analysis found in this petition applies equally to either formation of the test.

under Iowa Code §39.3(8)—which includes all state and federal felonies—is unconstitutional. *Id.* at 857.

40. The plurality found persuasive *Snyder v. King*, 958 N.E.2d 764 (Ind. 2011), a decision by the Indiana Supreme Court which reinterpreted its own state's constitution's infamous crimes clause. *Id.* at 854-57. The Indiana Constitution was adopted in 1851, just six years before Iowa's 1957 Constitution was drafted. *Id.* at 854-55. In *Synder*, the Indiana Court stated the test as follows:

> We hold that an infamous crime is one involving an affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections. These types of crimes are "most vile" in that they undermine the system of government established by our Constitution. Persons committing such crimes may be presumed to pose a bona fide risk to the integrity of elections . . . crimes marked by gross moral turpitude alone are not sufficient to render a crime infamous for purposes of the Infamous Crimes Clause.
>
> Prototypical examples of infamous crimes are treason, perjury, malicious prosecution, and election fraud . . . Although most of these examples involve elements of deceit and dishonesty . . . the critical element is that they attempt to abuse or undermine our constitutional government.

Snyder v. King, 958 N.E.2d 764, 781-82 (Ind. 2011).

41. Petitioner's case requires the Court to apply the constitutional test laid out in *Chiodo* to determine which felonies lead to disenfranchisement barring restoration of rights by the Governor.

42. The crime of delivery of a controlled substance would not have been considered an infamous crime by our framers in 1857, had our framers had any concept of such a body of offenses. In articulating why an OWI 2nd conviction was not an infamous crime, the Iowa Supreme Court noted that "[i]t is not aligned in any way with those crimes [like

arson, rape, and "willful and corrupt perjury"] designated by the legislature in 1839 as infamous." *Chiodo*, 846 N.W. 2d at 857 (Cady, C.J., for the plurality)(The plurality is careful to explain that those crimes listed in the 1839 Wisconsin Territory statute are not a precise enumeration of our constitutional definition of infamous crime, but are helpful in deducing our founders' understanding of the meaning of infamous crime in 1857 a generation later). Like the crime of operating a vehicle while intoxicated, delivery of cocaine has no analogue in the crimes understood as infamous by our founders.

43. No crime consisting of possession or delivery of a controlled substance could be categorized as an infamous crime under the historical test. Delivery, like most drug crimes, is driven by various factors including addiction, poverty, and mental health issues. As a disease, substance addiction is a facet of an individual's health—for which our founders had no concept—not indicative or dispositive of a vile, base, or detestable character. The mass criminalization and incarceration of drug usage is a relatively recent phenomenon without root in our common law; there is no long tradition of treating drug usage and addiction as crimes dating back to our state's founding. Only in the last 40 years during the so-called War on Drugs have such tremendous resources been expended to arrest, convict, and incarcerate people for substance abuse and related behaviors. *See* Heather Schoenfeld, *The Politics of Crime, and Mass Incarceration in the United States,* 15 J. Gender Race & Just. 315 (2012); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 Stan. L. Rev. 1271 (2004); *see also* Mark W. Bennett and Mark Osler, *America's Mass Incarceration: The Hidden Costs*, Minneapolis Star Tribune, June 27, 2013.

44. Furthermore, delivery of a controlled substance has no bearing on, or nexus to, the regulatory purpose of preserving election integrity, as required by the plurality opinion in *Chiodo*. *Chiodo*, 846 N.W.2d at 855-56.

45. Finally, Mrs. Griffin was not convicted of a specific intent crime, because Class C felony delivery of cocaine does not require the state to prove any intent beyond the delivery itself. Unlike general intent crimes, specific intent crimes require that the individual intend some further act or consequence beyond the prohibited action itself. *See Eggman v. Scurr,* 311 N.W.2d 77, 79 (Iowa 1981) ("[O]ffenses which have no express intent elements may be characterized as general intent crimes.") Iowa Code §124.401(1) creates a crime for three categories of behavior: (1) manufacturing a controlled substance, (2) delivering a controlled substance; and (3) possessing a controlled substance with intent to manufacture or deliver a controlled substance. Iowa Code §124.401(1) ("[I]t is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance.") The third category, possession with intent to deliver or manufacture, *is* a specific intent crime, because in order to convict a defendant, the State must prove not only that the defendant possessed the controlled substance, but also that she intended to deliver or manufacture it. However, the first two categories, delivery and manufacturing, are general intent crimes, because they only require the State to prove that there was delivery/manufacturing of a controlled substance, and the defendant's intentions about what happened after delivery are of no consequence. Because Mrs. Griffin pled guilty to delivery of a controlled substance, a general intent crime, her offense cannot meet the third requirement under the *Chiodo* test.

46. Because Mrs. Griffin's conviction for delivery of less than 100 grams of cocaine does not meet the historical concept of infamous crime at the time of our state's 1857 constitutional convention, as articulated in the nascent test outlined in *Chiodo*, she has not been convicted of an infamous crime. Accordingly, it is an unconstitutional deprivation of her right to vote for the Defendants to enforce Iowa's statutes, regulations, practices, and forms to prohibit her from exercising the franchise.

47. Iowa Code §39.3(8)—as well as related statutes, regulations, practices and forms which disqualify persons convicted of any felony—are unconstitutional as applied to those persons, including Mrs. Griffin, who have discharged sentences stemming from conviction of felonies that do not meet the definition of infamous crimes under Art. II, Sect. 5 of the Iowa Constitution.

COUNT II

DENIAL OF DUE PROCESS: GOVERNMENTAL INTERFERENCE WITH FUNDAMENTAL RIGHT TO VOTE

48. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

49. Iowa's Due Process Clause, Article I, Sect. 9 of the Iowa Constitution, provides that "no person shall be deprived of life, liberty, or property, without due process of law."

50. The court applies strict scrutiny to laws and regulations that limit fundamental rights. *See State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005); *State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007); *State v. Krier*, 772 N.W.2d 270 (Iowa Ct. App. 2009). For a government action to survive strict scrutiny, it must be narrowly tailored to serve a compelling state interest. *Id.; State v. Hartog*, 440 N.W.2d 852, 854 (Iowa 1989).

51. Among the fundamental interests protected by the Iowa Constitution's due process clause is the right of to vote. *Chiodo,* 846 N.W.2d at 848; *Devine v. Wonderlich,* 268 N.W.2d

620, 623 (Iowa 1978). *See also Harper v. Va. State Bd. Of Elections*, 383 U.S. 663, 665-66 (1966); *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)(noting that the right to vote is "a fundamental political right, because [it is] preservative of all rights.") *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" (quoting *Ill. Bd. Of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983)(the right to vote is one of the liberty interests protected by the due process clause); *Harper*, 383 U.S. at 665.

52. Iowa's statutes, regulations, forms, and procedures that limit Mrs. Griffin from voting fail to meet the rigors of strict scrutiny due process analysis under the Iowa Constitution. Compelling governmental interests in regulating voting include "shielding the elector from the influence of coercion and corruption, protecting the integrity of the ballot, and insuring the orderly conduct of elections." *Chiodo*, 846 N.W.2d at 856. Thus, statutes limiting the franchise to those electors entitled to vote under our state constitution would serve a compelling governmental interest. To survive the due process inquiry, however, those statutes must be sufficiently narrowly tailored to meet that interest without serving to "subvert or impede" the right of qualified electors to vote. By including all felonies, not just those which are infamous, under Article II, section 5, the governing Iowa statutes, regulations, forms and procedures are not narrowly tailored to accomplish a compelling governmental interest, because they unnecessarily block thousands of constitutionally qualified Iowa electors of their right to vote.

53. Because of the Defendants' enforcement of the state's various prohibitions on voting and candidacy by Iowans who have completed felony convictions that do not meet the constitutional definition of "infamous crime," Mrs. Griffin has been denied the

fundamental right of franchise, and has been denied due process of law in violation of Art. I, sect. 9 of the Iowa Constitution.

PRAYER FOR RELIEF:
DECLARATORY JUDGMENT AND SUPPLEMENTAL RELIEF

54. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

55. This matter is appropriate for declaratory relief pursuant to Iowa Rule of Civil Procedure 1.1101 and granting such relief would terminate the legal dispute that gave rise to this Petition.

56. This matter is also appropriate for permanent injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501. Absent injunctive relief, Mrs. Griffin will continue to suffer irreparable injury for which there is no adequate remedy at law for every future election in this state for which she would otherwise be able to exercise her fundamental right to vote.

57. Once the Court enters the requested declaratory relief, Mrs. Griffin's right to vote is clear and the Defendants have a mandatory obligation to allow her to register to vote, to vote, and to count her ballot when validly cast.

WHEREFORE, the Petitioner respectfully urges this Court to enter judgment as follows.

(1) Declaring that:

a. Iowa's statutory and regulatory prohibitions, including registration forms and departmental processes, that prohibit from voting and holding public office

Iowans who have completed sentences for crimes classified as felonies which are not infamous crimes, are invalid and unconstitutional;

b. Iowa residents who have completed their sentences for criminal convictions that are classified as felonies but which do not meet the constitutional threshold of infamous crimes, including Mrs. Griffin, may not be denied the right to register to vote and vote or hold public office.

(2) Enjoining Defendants from:

a. Refusing to allow Iowans who have completed a criminal sentence that is classified as a felony but which is not an infamous crime under the Iowa Constitution to register to vote, cast a ballot, have that ballot counted, and run for public office on that basis;

b. Criminally prosecuting for election misconduct, registration fraud, voter fraud, perjury, or otherwise imposing civil or criminal sanctions on persons who have registered to vote or voted in Iowa who at the time had completed a criminal sentence for a crime that is not an infamous crime under the Iowa Constitution;

(3) Issuing a Writ of Mandamus requiring the Defendants to immediately permit Iowa residents who have completed their sentences for criminal convictions that are classified as felonies, but do not meet the constitutional threshold test for infamous crimes, including Mrs. Griffin, to register to vote and to vote in upcoming elections held in our state;

(4) For Plaintiff's costs incurred herein; and,

(5) For such other and further relief as the Court deems just and proper.

Date: November 7, 2014

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

Original filed.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. TERRY BRANSTAD, in his official capacity as the Governor of the State of Iowa, MATT SCHULTZ, in his official capacity as the Iowa Secretary of State, and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa. Respondents.	No. EQCE077368 **RESPONDENT BRANSTAD'S MOTION TO DISMISS**

COMES NOW Terry Branstad, in his official capacity as Governor of the State of Iowa, moves to dismiss the above-captioned petition pursuant to Iowa Rule of Civil Procedure 1.421(1)(*d*), (*f*), and in support thereof respectfully states:

1. Petitioner Kelli Jo Griffin filed a Petition for Declaratory Judgment and Supplemental Injunctive and Mandamus Relief "requiring that Ms. Griffin be allowed to register and vote in Iowa." Petition at 1.

2. In 2008, Mrs. Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, a class C felony. Petition ¶ 9. She discharged her sentence on January 7, 2013.

3. Article II, section 5 of the Iowa Constitution declares that "[n]o . . . person convicted of any infamous crime, shall be entitled to the privilege of an elector." Iowa's statutory scheme defines "infamous crime" as all state and federal felonies. Iowa Code § 39.3(8). As a result, a person convicted of a felony is prohibited from registering to vote and voting unless the person's rights are later restored by the Governor.

4. The Petitioner now apparently seeks a declaratory order that Iowa's statutory scheme, whereby all felonies are defined as infamous crime, is unconstitutional.

5. Despite the caption of the Petition, which seeks a Declaratory Judgment, Injunctive and Mandamus Relief, the Petition itself states two counts or causes of action. The first count, as stated in the Petition, is "Complete Deprivation of Constitutional Right to Vote." Petition at 9. The second count, as stated in the Petition, is "Denial of Due Process: Governmental Interference with Fundamental Right to Vote." Petition at 15.

6. It is unclear from the face of the Petition whether the Petitioner is bringing a Petition for Declaratory Judgment, Injunctive Relief, and Mandamus as is captioned based upon the alleged unconstitutionality of Iowa's election code or whether the Petitioner is attempting to bring two direct causes of action under the Iowa Constitution.

7. Assuming the Petitioner intends to bring the two constitutional claims as set forth in the Petition, the Governor moves to dismiss for failure to state a cause of action. The Iowa Supreme Court has not recognized a direct cause of action under either the suffrage clause or the due process clause of the Iowa Constitution.

8. Alternatively, if the Petitioner intends to bring a declaratory judgment, Governor Branstad is not a proper party to this action. As the Petitioner correctly points out, Secretary of State Matt Schultz serves as the Official Registrar of Voters. Petition ¶ 3. As such, Secretary Schultz, and not Governor Branstad, is responsible for the preservation and maintenance of Iowa's voter registration rolls.

9. The Petitioner is not challenging the legality of Executive Order 70, issued by Governor Branstad, which rescinded Governor Vilsack's executive order that established an automatic process to restore the voting rights of individuals convicted of felonies. Nor

has Petitioner alleged that Governor Branstad has a legal obligation to restore her voting rights. In short, Petitioner is not challenging a single act or omission of Governor Branstad. The Petitioner has failed to state a claim against Governor Branstad.

10. Governor Branstad, moreover, is not a necessary party to this action to ensure that Petitioner's requested relief be granted. If Petitioner is correct and Iowa's statutory definition of infamous crime is unconstitutional, she will automatically have the ability to register to vote and vote. The Governor cannot "restore" voting rights which were not lawfully taken away.

WHEREFORE Terry Branstad, acting in his official capacity as Governor of the State of Iowa requests that he be dismissed from the above-captioned Petition.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

JEFFREY S. THOMPSON
Solicitor General of Iowa

/s/ Meghan L. Gavin

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TERRY BRANSTAD

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. TERRY BRANSTAD, in his official capacity as the Governor of the State of Iowa, MATT SCHULTZ, in his official capacity as the Iowa Secretary of State, and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa. Respondents.	No. EQCE077368 **RESPONDENT SCHULTZ'S MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO RECAST**

COMES NOW Matt Schultz, in his official capacity as Iowa Secretary of State, asks the court to order the Petitioner to recast the above-captioned Petition pursuant to Iowa Rule of Civil Procedure 1.421(1)(*d*), (*f*), and in support thereof respectfully states:

1. Petitioner Kelli Jo Griffin filed a Petition for Declaratory Judgment and Supplemental Injunctive and Mandamus Relief "requiring that Mrs. Griffin be allowed to register and vote in Iowa." Petition at 1.

2. Despite the caption of the Petition, which seeks a Declaratory Judgment, Injunctive and Mandamus Relief, the Petition itself states two counts or causes of action. The first count, as stated in the Petition, is "Complete Deprivation of Constitutional Right to Vote." Petition at 9. The second count, as stated in the Petition, is "Denial of Due Process: Governmental Interference with Fundamental Right to Vote." Petition at 15.

3. It is unclear from the face of the Petition whether the Petitioner is bringing a Petition for Declaratory Judgment, Injunctive Relief, and Mandamus as is captioned

based upon the alleged unconstitutionality of Iowa's election code or whether the Petitioner is attempting to bring two direct causes of action under the Iowa Constitution.

4. Assuming the Petitioner intends to bring the two constitutional claims as set forth in the Petition, the Secretary moves to dismiss for failure to state a cause of action. The Iowa Supreme Court has not recognized a direct cause of action under either the suffrage clause or the due process clause of the Iowa Constitution.

5. Alternatively, the Secretary requests that the Petitioner be ordered to recast her Petition. In order for the Secretary to adequately and accurately respond to the Petition, it is imperative to know what causes of action are properly before the court. *See Rees v. City of Shenandoah*, 682 N.W.2d 77 (Iowa 2004) ("A petition complies with the 'fair notice' requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature.").

6. It is further unclear whether the Petitioner is challenging the constitutionality of the statutes facially or as applied only to her. The Petition is captioned solely in her name and not in the name of herself and all those similarly situated. Despite this, in her prayer for relief the Petitioner asks this court to declare that "Iowa residents who have completed their sentences for criminal convictions that are classified as felonies but which do not meet the constitutional threshold of infamous crimes, including Mrs. Griffin, may not be denied the right to register to vote and vote or hold public office." Petition at 18.

7. If the Petitioner is attempting to bring this action on behalf of all individuals convicted of felonies, it is wholly unclear what legal basis she has for bringing such a

global claim. What standing does Mrs. Griffin have to assert, for example, that felony murder is not an infamous crime?

WHEREFORE Matt Schultz, acting in his official capacity as Iowa Secretary of State requests that Petitioner be ordered to recast her Petition to make clear what causes of action she is bringing.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

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MATT SCHULTZ

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. TERRY BRANSTAD, in his official capacities as the Governor of the State of Iowa, MATT SCHULTZ, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	NO. EQCE077368 **PETITIONER'S RESISTANCE TO RESPONDENT SCHULTZ'S MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO RECAST**

COMES NOW Petitioner, Kelli Jo Griffin, by and through her attorneys, and hereby resists Respondent Schultz's Motion to Dismiss, as well as his alternative Motion to Recast, and states the following in support thereof:

1. Respondent Schultz asks this Court to dismiss or order the Petitioner to recast the Petition, asserting that it is unclear whether the Petitioner is bringing a Petition for Declaratory Judgment, Injunctive Relief, and Mandamus as stated or instead is attempting to bring a "direct cause of action under the Iowa Constitution." Resp. Schultz Mot. to Dismiss ¶ 3.
2. The nature of the Petitioner's action is unambiguously and consistently stated in the caption of the Petition, in the body of the Petition, and in the Prayer for Relief of the Petition. Pet. at p. 1 ('Petition for Declaratory Judgment and Supplemental Injunctive and Mandamus Relief'); *passim*, ¶¶ 54-57 (requesting "declaratory relief" and "permanent injunctive relief"); and ¶¶ 17-18 (respectfully asking the Court to

determine the rights of the Petitioner and grant such supplemental equitable relief as is necessary to protect those rights).

3. In order to provide a defendant with adequate notice, a petition need only "contain a short and plain statement of the claim showing that the pleader is entitled to relief." Iowa R. Civ. Pro. 1.403(1). As the Iowa Supreme Court has noted, "[u]nder notice pleading, nearly every case will survive a motion to dismiss." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004), citing *Smith v. Smith,* 513 N.W.2d 728 (Iowa 1994). Upon review, a dismissal for lack of adequate notice will survive "only if [the court] can conclude that no state of facts is conceivable under which a plaintiff might show a right of recovery." *Smith v. Smith* at 730, citing *Haugland v. Schmidt*, 349 N.W.2d 121, 123 (Iowa 1984).

4. As the Petition plainly states in its statement of the case, Petitioner alleges all operative facts, Pet. ¶¶ 8 – 18, and asks the Court to determine a single, purely legal question: whether Petitioner's prior felony conviction for delivery of less than 100 grams of cocaine, which she has fully discharged, is a conviction of an "infamous crime" as used in the Iowa Constitution, Art. II, sect. 5, to disqualify citizens from voting. Pet. ¶ 7. Thus, the Petition "informs the defendant of the incident giving rise to the claim and of the claim's general nature." Resp. Schultz Mot. to Dismiss ¶ 5, citing *Rees v. City of Shenandoah*, 682 N.W.2d 77 (Iowa 2004). If, as the Petitioner asserts, the Court determines that her criminal conviction is not disqualifying as "infamous," then the various statutes and regulations that limit her right to vote should be enjoined as unconstitutional, which supplemental relief the Iowa Rules of Civil Procedure provide for and Petitioner clearly prays for. Pet. ¶¶ 54-57 and ¶¶ 17-18. The Petition provides the reasons and bases of the unconstitutionality of the

underlying statues and regulations, which prohibit the Petitioner's exercise of her right to vote, nominated as two "counts," and further provides a list of those statutes and regulations which have or may be applied to deny Petitioner her right to vote. Pet. ¶ 30-53.

5. In order for this court to enjoin Respondent from violating Petitioner's constitutional rights, this court must necessarily determine whether constitutional rights are being violated. Enumerating those constitutional violations as "counts" helps frame each issue, consistent with precedent and local practice. *See, e.g., Varnum v. Brien,* Original Petition (requesting declaratory and injunctive relief, and listing counts of "Denial of Due Process: Governmental Interference with the Fundamental Right to Marry" and "Denial of Equal Protection: Governmental Discrimination in Access to Marriage") *available at* http://www.lambdalegal.org/in-court/legal-docs/varnum_ia_20051213_petition-for-declaratory-judgment-and-supplemental-mandamus-relief (last visited December8, 2014); *Coalition for a Common Cents Solution v. Vilsack,* Original Petition (requesting declaratory and injunctive relief and enumerating counts of "Violation of the Right to Education"; "Violation of Equal Protection Guarantees"; "Violation of Substantive Due Process Rights") *available at* http://www.schoolfunding.info/resource_center/legal_docs/Iowa/Coalition__v_Iowa_StateDistrictCou.pdf (last visited December 8, 2014).

6. There is no authority to support the Respondent's proposition that an action for declaratory judgment which asks the court to declare that a statute or government action violates the Iowa Constitution is limited to specific provisions of the Constitution, or excludes due process or the right to vote. Resp. Schultz Mot. to

Dismiss ¶ 4. To the contrary, Iowa Rule of Civil Procedure 1.1101 is not exclusive to particular state constitutional rights, and Iowa courts have heard and decided declaratory judgment actions challenging government actions under numerous constitutional provisions. *See, inter alia, Green v. Shama*, 217 N.W.2d 547 (Iowa 1974) (declaratory judgment action challenging rules governing barbers and cosmetologists as a violation of equal protection and substantive due process under Iowa Const. Art. I sect. 9); *Gradischnig v. Polk County*, 164 N.W.2d 104 (Iowa 1969) (declaratory judgment action challenging apportionment of county supervisor districts as a violation of equal voting rights under Iowa Const. Art. I sect. 6); *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009) (declaratory judgment action challenging statute defining marriage as between one man and one woman as violation of state equal protection under Iowa Const. Art. I sect. 6); *Fults v. City of Coralville*, 666 N.W.2d 548 (Iowa 2003) (declaratory judgment action challenging city's undertaking of excessive municipal debt under Iowa Const. Art. XI, sect. 3); *Bormann v. Board of Sup'rs In and For Kossuth County*, 584 N.W.2d 309 (Iowa 1998) (declaratory judgment action challenging county's use of eminent domain under Iowa Const. Art. I, Sect. 18).

7. Jurisdiction is properly pled according to the Petitioner's request for declaratory judgment and supplemental relief according to Iowa Rule of Civil Procedure 1.1101 (permitting declaratory judgments, whereby the Court declares the rights, status, and other legal relations whether or not further relief is or could be claimed) and Iowa Rule of Civil Procedure 1.1106 (permitting the Court to grant supplemental relief wherever necessary or proper, as pled by the petition in the original case.) Pet. ¶ 5. In this case, the supplemental relief Petitioner requests is injunctive and mandamus relief. Pet. *passim.* Rule 1.1106 provides that "[i]f the court deems the petition

sufficient, it shall, on such reasonable notice as it prescribes, require any adverse party whose rights have been adjudicated to show cause why such relief should not be granted." Further, the Iowa Supreme Court has stated that declaratory judgment rules "are to be construed liberally to carry out their purpose…" in order to "afford relief from uncertainly and insecurity with respect to rights, status and other legal relations." *Lewis Consolidated School District v. Johnston,* 127 N.W.2d 118, 122 (Iowa 1964).

8. Thus, this Court possesses the jurisdiction to grant the relief requested by the Petitioner as pled in its Petition, which provides clear and unequivocal notice to the Respondent of both the nature of the action and the specific relief requested.

9. Petitioner asserts standing on her own behalf. Pet. ¶ 1, 7, 54-57. Petitioner is not "attempting to bring this action on behalf of all individuals convicted of felonies" as stated in the Respondent's Motion to Dismiss. Rather, she seeks a declaration that the Iowa statues and regulations prohibiting her from exercising her right to vote are unconstitutional as applied to her and thus should be enjoined, because the offense for which she was convicted is not an "infamous crime" as that term is used in the Iowa Constitution. The Petitioner's Prayer for Relief respectfully requests that the Court articulate the legal test for an "infamous crime" in such a manner as might provide as much clarity as possible for Iowans whose right to vote may also be implicated by its decision. As pled by the Petitioner, according to information provided by the Iowa Department of Corrections, there are some 14,350 such Iowans who are currently disenfranchised. Pet. ¶ 28. It is appropriate that the Court be made aware of this information so that the Court may take such judicial notice of it as it deems just and proper.

10. The Petition is consistent with Iowa law, rules of civil procedure, and state and local practice.

WHEREFORE, for the reasons stated above, Petitioner respectfully asks this Court to deny Respondent Schultz's Motion to Dismiss and his alternative Motion to Recast.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, **Petitioner,** **vs.** **TERRY BRANSTAD, in his official capacity as the Governor of the State of Iowa, MATT SCHULTZ, in his official capacity as the Iowa Secretary of State, and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa,** **Respondents.**	**CASE NO. EQCE077368** **RULING AND ORDER ON MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO RECAST**

On January 22, 2015, Respondent Matt Shultz's Motion to Dismiss or in the alternative Motion to Recast, Respondent Terry Branstad's Motion to Dismiss, and Respondent Denise Fraise's Motion to Dismiss came on for hearing. Petitioner, Kelli Jo Griffin appeared personally and with her attorneys Rita Bettis and Randall Wilson. Respondents Branstad and Schultz appeared through Iowa Solicitor General Jeffrey Thompson. Respondent Fraise appeared with Lee County Attorney Michael Short. After reviewing the file and hearing the arguments of counsel, the Court enters the following Ruling and Order:

1. Respondent Matt Shultz's Motion to Dismiss or in the alternative Motion to Recast.

Respondent Matt Shultz argues that the Petitioner should recast her Petition because it is not clear from the pleadings "whether the Petitioner is bringing a Petition for Declaratory Judgment, Injunctive Relief, and Mandamus as is captioned based upon the alleged unconstitutionality of Iowa's election code or whether the Petitioner is attempting to bring two

direct causes of action under the Iowa Constitution." Plaintiff assures the Court she is not bringing direct causes of action against the Respondents under the Iowa Constitution.

Under notice pleading:

> The petition need not allege ultimate facts that support each element of the cause of action. The petition, however, must contain factual allegations that give the defendant fair notice of the claim asserted so the defendant can adequately respond to the petition. A petition complies with the fair notice requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature.

Rees v. City of Shenandoah, 682 N.W.2d 77, 79 (Iowa 2004) (internal citations and quotations omitted).

On this particular point, the Petition clearly states that the Petitioner is seeking a declaratory judgment that the Petitioner's felony conviction for delivery of less than 100 grams of cocaine is not an infamous crime under the Iowa Constitution. In addition, Petitioner seeks injunctive relief to enjoin the State of Iowa from preventing her to vote and a writ of mandamus ordering the Secretary of State and the Lee County Auditor to obey the mandate of the Court's declaration. The Court finds the Petition contains the necessary operative facts to inform the Respondents "of the incident giving rise to the claim and of the claim's general nature." *Id*. Dismissal is not required because Petitioner's Petition does not plead direct causes of action. Recast is unnecessary because the Petition is sufficiently clear on this point to enable the Respondent Secretary of State to plead to it. Iowa R. Civ. P. 1.421(1)(d). Therefore, Respondent Shultz's Motion to Dismiss or to Recast is denied on this point.

Respondent Matt Shultz also argues that the Petitioner should recast her Petition because it is unclear whether she is challenging the constitutionality of the election code facially or as applied to her. While Petitioner's resistance states she is merely seeking relief on her own behalf, her Petition is not clear on this point. The Petition is captioned solely in her name, and in the

pleadings she argues that her specific felony offense of conviction of is not an infamous crime under the Iowa Constitution. However, in her prayer for relief, Petitioner seeks relief on her own behalf and for other Iowa citizens who have been convicted of other felonies that are not infamous crimes. Thus, her pleading is ambiguous and is insufficiently clear on this particular point to enable the Respondent to plead in response.

It is not clear from the face of the Petition the basis upon which she makes her broad prayer for relief, or to what extent, if any, she seeks to have the Court's ruling apply to other Iowa citizens. For example, does Petitioner seek to have the Court's declaratory ruling apply to herself and all other Iowans convicted of the same crime? Does she seek to have the ruling apply to all Iowans convicted of any felony? Are there some felonies that Petitioner would concede are infamous crimes to the extent that Iowans convicted of those crimes are not entitled to relief? If Petitioner is limiting her prayer for relief solely to her own situation, she shall recast to so state. If the Petitioner is seeking an order from this Court that would apply to anyone but her, she shall recast her Petition to clearly state the basis and authority for such a claim.

The Court acknowledges our liberal notice pleading rules. The Court recognizes the Petitioner may plead in the alternative. The Court does not intend to allow the Respondent to micro-manage the Petitioner's pleadings. However, due to the ambiguity of the allegations of Plaintiff's Petition vis à vis her prayer for relief, it is reasonable to require her to recast her petition or to make a more specific statement to enable the Respondent to plead to it. I. R. Civ. P. 1.433. This is particularly important in this case where the pleadings will frame the issues to be decided by summary judgment based upon undisputed facts.

To this extent, Respondent Shultz's Motion to Recast is granted.

2. Respondent Terry Branstad's Motion to Dismiss

Respondent Terry Branstad, Governor of the State of Iowa, argues that he is not a proper party to this action, because the Secretary of State is the Official Registrar of Voters and is the official responsible for the preservation and maintenance of Iowa's voter registration rolls. The Petitioner asserts that Governor Branstad is the Chief Magistrate and is responsible for the faithful execution of the laws under the Iowa Constitution. In addition, Respondent Branstad issued Executive Order 70, which requires convicted felons such as the Petitioner to apply to the Governor for a restoration of their voting rights. Petitioner claims that in order to compel the State of Iowa to comply with the Court's order, it is necessary to name the Governor as party.

Respondent Terry Branstad is not an indispensable party to this action. His absence will not prevent the Court from rendering any judgment between the parties before it. Iowa R. Civ. P. 1.234(2). Petitioner is not challenging the constitutionality of Executive Order 70. In fact, if the Court finds Petitioner's felony conviction was not an infamous crime and grants the Petitioner the relief she is requesting, she will have the right to vote and will not be required to apply to the Governor for a restoration of rights. The Iowa Secretary of State and the Lee County Auditor are the individuals responsible for the voter registration rolls and voter eligibility, not the Governor. The Governor can be dropped from this action without any effect of the Petitioner's right to obtain the relief that she seeks. Iowa R. Civ. P. 1.236(1). The State of Iowa will not refuse to comply with any mandate the Court may direct simply because the Governor is not a party. The presence of the Secretary of State as a party is sufficient to secure any relief the Petitioner seeks.

Further, Petitioner's Petition against the Governor fails to state a claim upon which relief may be granted. Accepting the allegations of the Petition as true, it appears to a certainty that Petitioner will not be entitled to relief against the Governor under any state of facts that could be

proved in support of the claim asserted. Iowa R. Civ. P. 1.421(1)(f); *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 586 (Iowa 2004). As stated above, the Governor is only able to restore rights that have been previously taken away. If the Petitioner is correct in her allegations, she will have the right to vote, and will not have to apply to the Governor to have her rights restored.

Therefore, Respondent Terry Branstad's Motion to dismiss is granted.

3 Respondent Denise Fraise' Motion to Dismiss

Respondent Lee County Auditor Denise Fraise argues that she is not a proper party to this action, as she merely takes the voter registration rolls as established by the Secretary of State, and utilizes those to determine who is eligible to vote. The Petitioner argues that the Lee County Auditor is an election commissioner who registers voters, verifies voter eligibility and administers elections and determines challenges to voter eligibility.

Respondent Denise Fraise is an indispensable party in this matter. Iowa R. Civ. P. 1.234(2). The County Auditor's absence would prevent the court from rendering judgment because it may be necessary to order the Auditor to comply with the mandate of the Court's declaration. The County Auditor is the county commissioner of elections. Iowa Code § 47.2. The County Auditor shares responsibilities with the Secretary of State who is designated as the state commissioner of elections. Iowa Code §§ 39.3, 47.1. The County Auditor conducts voter registration and conducts elections in the county. Iowa Code § 47.2. The Auditor determines challenges to voters based on eligibility, including for felony conviction. Iowa Code § 48A.16. The County Auditor is responsible for cancelling the registration of an ineligible voter based upon a felony conviction. Iowa Code § 48A.30. Respondent Fraise, as the Lee County Auditor, verifies voter eligibility and administers elections locally. The Petition alleges that Auditor Fraise identified her ballot and, after running her information through the voter registration

program at the Lee County Auditor's Office, determined that she was ineligible because of her prior felony conviction resulting in criminal charges for which she was acquitted.

While the Auditor contends simply performs a ministerial duty, Petitioner claims she has the authority to exercise a degree of discretion in the performance of her duties. See Iowa Code § 48A.16. The Court appreciates the Auditor's representation that she will follow the Court's mandate without being ordered to do so. The Court has no reason the question the Auditor's sincerity. However, the Petitioner is not required to accept the Auditor's assurances. The Court finds that the Lee County Auditor is a proper party in this matter. *See Selzer v. Synhorst*, 113 N.W.2d 724 (1962).

Therefore, Respondent Denise Fraise's Motion to Dismiss is denied.

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that Respondent Matt Shultz's Motion to Dismiss or in the alternative Motion to Recast is hereby GRANTED in part and DENIED in part. By agreement of the parties, Petitioner will amend and recast her pleading to reflect that Paul Pate is the Secretary of State. Respondent Terry Branstad's Motion to Dismiss is hereby GRANTED. Respondent Denise Fraise's Motion to Dismiss is hereby DENIED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCE077368	KELLI JO GRIFFIN VS TERRY BRANSTAD ET AL

So Ordered

Arthur E. Gamble, Chief District Judge,
Fifth Judicial District of Iowa

Electronically signed on 2015-02-05 15:53:51 page 7 of 7

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 **FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT AND SUPPLEMENTAL INJUNCTIVE AND MANDAMUS RELIEF**

COMES NOW Petitioner, Kelli Jo Griffin, by and through her attorneys, Rita Bettis and Randall Wilson of the American Civil Liberties Union of Iowa Foundation, and Julie A. Ebenstein and Dale Ho of the Voting Rights Project of the American Civil Liberties Union, and prays for a declaratory judgment that Mrs. Griffin is an eligible elector, as well as injunctive and mandamus relief requiring that Mrs. Griffin be allowed to register and vote in Iowa, and in support thereof states the following:

PARTIES

1. Petitioner KELLI JO GRIFFIN ("Mrs. Griffin"), age 41, is a lifelong Iowan and current resident of Montrose, Iowa, in Lee County. She is married and has four children, including her stepdaughter. Their ages are 1, 3, 5, and 8. Mrs. Griffin is a home-maker and stay-at-home mother. In addition, she is active in her community, and volunteers at a child abuse prevention center, women's drug treatment center, and is a speaker to groups of women who, like her, are domestic violence and rape survivors. Mrs. Griffin was tried by jury and acquitted of perjury in March 2014 after having been charged as part of the state's two-year voter fraud investigation championed by former Iowa

Secretary of State Matt Schultz, who issued a statewide press release touting the filing of criminal charges against Mrs. Griffin on January 22, 2014. Mrs. Griffin, after successfully completing her term of probation, discharging her sentence, and turning her life around after a past nonviolent drug conviction, believed she was eligible to vote. On November 5, 2013, she registered to vote and cast a ballot in an uncontested city election held in Montrose, Iowa.

2. Respondent, the Honorable Paul Pate, is Secretary of State of the State of Iowa. As Secretary of State, Paul Pate also serves as State Registrar of Voters. Iowa Code §47.7 (2014). As Registrar, the Secretary of State is responsible for the preparation, preservation, and maintenance of voter registration records, as well as the preparation of precinct election registers for elections. Iowa Code §47.7(1) (2014). The Registrar is responsible for maintaining a single, computerized statewide voter registration file, coordinated with other agency databases, "including . . . judicial records of convicted felons." Iowa Code §47.7(2)(a). As such, the Secretary of State maintains a felon voter file. The file contains a list of persons whose names have been provided by the Iowa district court clerks as having been convicted of a felony, as well as a list of persons whose names have been provided by the Iowa Governor's Office as having had their citizenship rights restored. In 2013 and 2014, Secretary Pate's predecessor in office, former Secretary of State Matt Schultz, allocated approximately $240,000.00 of federal Help America Vote Act grant money to pay the salary of Iowa Division of Criminal Investigation agents to investigate instances of alleged fraudulent voting by persons with felony convictions. A total of 68 persons were investigated and referred to county attorneys for criminal prosecution; charges were brought in 16 cases, including against Mrs. Griffin.

3. Respondent Denise Fraise is the County Auditor for Lee County, Iowa. In this capacity, Denise Fraise is the county commissioner of elections. Iowa Code § 47.2 (2014). Auditor Fraise conducts voter registration and elections for Lee County. Auditor Fraise administered the November 2013 city election in Montrose, Iowa, in which the Petitioner voted. As she testified during Mrs. Griffin's trial, Auditor Fraise identified Mrs. Griffin's ballot and, after running her information through the voter registration program at the Lee County Auditor's Office, determined that Mrs. Griffin was ineligible because of her prior felony conviction, resulting in charges and prosecution for perjury, for which Mrs. Griffin was acquitted by a jury.

JURISDICTION AND VENUE

4. This action seeks a declaratory judgment and supplemental relief pursuant to Iowa Rule of Civil Procedure 1.1101 et seq., 1.1501 et seq., Iowa Code §661.1 et seq., and the common law. This Court has jurisdiction over this matter pursuant to Iowa Code §602.6101 (2014).

5. Venue is proper in this district pursuant to Iowa Code §616.3(2) (2014) because part of the cause arose in Polk County. One of the two respondents is a state official with primary offices at the State Capital in Polk County.

STATEMENT OF THE CASE

6. This case presents a purely legal question: whether Mrs. Griffin's prior felony conviction for delivery of less than 100 grams of cocaine—which sentence she has fully discharged—is an "infamous crime" as used in the Iowa Constitution, Art. II, sect. 5, to disqualify citizens from voting.

OPERATIVE FACTS

7. In 2001, Mrs. Griffin, then Kelli Jo Saylor, was convicted of possession of ethyl ether in violation of Iowa Code §124.401(4)(c) (2001), a class D felony. She received a suspended prison sentence and a term of probation, which she discharged in 2006.

8. On July 4, 2005, former Governor Vilsack signed Executive Order Number 42. Executive Order Number 42 "utilized a process that granted the restoration of citizenship rights automatically." Under Executive Order Number 42, there was an 81 percent reduction in the number of people disenfranchised in Iowa and an estimated 100,000 Iowans regained the right to vote.[1] The automatic restoration process created by Executive Order Number 42 remained in effect until January 14, 2011.

9. Following the completion of her sentence in 2006, Mrs. Griffin received an automatic restoration of her voting rights by operation of Executive Order Number 42.

10. On January 7, 2008, Mrs. Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, in violation of §124.401(1)(c)(2)(b) (2008), a Class C felony. She was given a suspended sentence and was placed on probation for 5 years. She successfully discharged her sentence on January 7, 2013.

11. On January 14, 2011, Governor Branstad Signed Executive Order Number 70, which revoked Governor Vilsack's Executive Order Number 42.

12. Executive Order Number 70 replaced the system of automatic voting rights restoration with an application process for people with felony convictions seeking restoration of their eligibility to vote.

[1] Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010*, THE SENTENCING PROJECT 12 (2010).

13. The press release issued from the Office of the Governor to announce the signing of Executive Order 70 provided that, "Executive Order 70 rescinded Gov. Vilsack's executive order that established an automatic process that gave voting rights and the right to hold public office to felons and those who committed aggravated misdemeanors. This was a major priority of Secretary of State Matt Schultz."
14. The current application process under Executive Order Number 70 costs $15 to complete an official DCI background check, requires considerable paperwork, and takes up to six months to complete.
15. On November 5, 2013, Mrs. Griffin registered and voted in an uncontested local election at the community center in Montrose, Iowa. She brought her four children to the polling site with her in order to teach them about voting. Her then-eight year old had recently learned about voting in school and Mrs. Griffin wanted to show her daughter how the process worked.
16. On December 16, 2013, the State charged Mrs. Griffin with Perjury, a class D felony, for registering to vote and voting in the November 5, 2013 municipal election, in violation of Iowa Code §720.2 (2014). Mrs. Griffin pleaded not guilty.
17. On March 19-20, 2014, Mrs. Griffin was tried by jury in Lee County.
18. At trial, Mrs. Griffin testified that in 2008, she was advised by her defense attorney that her citizenship rights would be restored by the Governor's Office through the automatic restoration process upon completion of her criminal sentence, including any period of probation or parole. That information was accurate at the time it was provided to Mrs. Griffin, and consistent with her experience of automatic restoration following her prior 2001 nonviolent felony drug conviction.

19. Mrs. Griffin was not informed that she was ineligible to vote until she was contacted by a Division of Criminal Investigation agent.
20. At her trial, Mrs. Griffin also testified as to her experience as a survivor of sexual and physical abuse that led to her prior substance abuse and addiction, as well as her subsequent recovery. She testified about turning her life around, and her current life as an involved stay-at-home mom and spouse, who is an active volunteer and advocate in her community for children, survivors of abuse, and people in recovery for addiction.
21. On March 20, 2014, the jury acquitted Mrs. Griffin.
22. Mrs. Griffin now wishes to register to vote and vote in elections that impact her, her family, and her community without fear of criminal prosecution.
23. Iowa Code §48A.6 (2014) provides that "A person who has been convicted of a felony as defined in §701.7, or convicted of an offense classified as a felony under federal law" is "disqualified from registering to vote and from voting."
24. Iowa Code §39.3(8) (2014) provides that "*'Infamous crime'* means a felony as defined in §701.7 or an offense classified as a felony under federal law."
25. Iowa Code §48A.14 (2014) provides for challenges to a registered voter's registration on the grounds that "The challenged registrant has been convicted of a felony, and the registrant's voting rights have not been restored."
26. Iowa Code §49.79 (2014) provides that a precinct official has "the duty to challenge any person offering to vote whom the official knows or suspects is not duly qualified" and that a person may be challenged if "The challenged person has been convicted of a felony, and the person's voting rights have not been restored."
27. Iowa Code §48A.30(1)(d) (2014) provides that the voter registration of a registered voter shall be cancelled if "The clerk of the district court, or the United States attorney, or the

state registrar sends notice of the registered voter's conviction of a felony as defined in §701.7, or conviction of an offense classified as a felony under federal law. The clerk of the district court shall send notice of a felony conviction to the state registrar of voters. The registrar shall determine in which county the felon is registered to vote, if any, and shall notify the county commissioner of registration for that county of the felony conviction."

28. Iowa's current voter registration form requires that registrants aver under penalty of perjury "I have not been convicted of a felony (or I have received a restoration of rights)."

29. Similarly, Iowa Code §43.18(9) (2014) requires a candidate for public office to aver to a statement on the affidavit of candidacy "A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States."

30. Iowa Code §57.1(2)(c) (2014) provides that it is grounds to contest an election "That prior to the election the incumbent had been duly convicted of a felony, as defined in §701.7, and that the judgment had not been reversed, annulled, or set aside, nor the incumbent pardoned or restored to the rights of citizenship by the governor under chapter 914, at the time of the election."

31. State legislative districts and federal Congressional districts are drawn by the non-partisan Legislative Services Agency (LSA) on the basis of population alone, as determined by Federal Decennial Census. Iowa Code §42.4 (2014). Those censuses on which congressional districts are apportioned do not exclude people with criminal convictions from the population numbers. In turn, Iowa's state and federal political

districts already include people convicted of felonies, and restoring the right of persons with a completed felony conviction to vote in the upcoming election would not disrupt fair political representation among Iowa state and federal districts as determined by LSA.

32. On October 16, 2014, the Department of Corrections responded to an open records request filed by the ACLU by providing names of people who were in its custody who since January 14, 2011 have discharged a felony offense in Iowa, who have not subsequently been convicted of a felony offense. The Department provided names of 14,350 people, including Mrs. Griffin.

33. As of January 14, 2014, in the three years since Executive Order 70, the Governor's Office had only restored the voting rights of 40 Iowans.

COUNT I

COMPLETE DEPRIVATION OF CONSTITUTIONAL RIGHT TO VOTE

34. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

35. The Iowa Constitution assures the right of suffrage for every citizen of the United States who is 21 years of age[2] and an Iowa resident according to the terms laid out by law. Iowa Const. Art. II. Sec. 1. In the same Article, it disqualifies as eligible electors two classes of persons: those adjudged mentally incompetent to vote and those "convicted of any infamous crime." Iowa Const. Art. II Sec. 5.

[2] The Twenty-Sixth Amendment to the U.S. Constitution extends the right to vote to those age eighteen or older. U.S. Const. Amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.")

36. In the recent case *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (2014), Chief Justice Cady, writing for the plurality decision, summarized the jurisprudence in Iowa governing the right of citizens to vote:

> Voting is a fundamental right in Iowa, indeed the nation. *See Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live. *See Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535, 11 L. Ed. 2d 481, 492 (1964). The right to vote is found at the heart of representative government and is "preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S. Ct. 1362, 1381, 12 L. Ed. 2d 506, 527 (1964); *accord Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S. Ct. 1064, 1071, 30 L. Ed. 220, 226 (1866).

Chiodo, 846 N.W. 2d at 848 (Cady, C. J., for the plurality).

37. The *Chiodo* case overturned three cases dating back nearly 100 years that incorrectly and over-broadly interpreted the Iowa Constitution's Infamous Crimes Clause as disqualifying persons to vote and hold public office for a conviction of "any crime punishable by imprisonment in the penitentiary." *Id.* (citing *State ex Rel Dean v. Haubrich,* 248 Iowa 978, 980, 83 N.W.2d 451, 452 (1957); *accord Blodgett v. Clarke*, 177 Iowa 575, 578, 159 N.W.243, 244 (1916) (per curiam); *and Flannagan v. Jepson,* 177 Iowa 393, 399-400, 158 N.W. 641, 643 (1916)).

38. In *Chiodo,* a five justice majority agreed that aggravated misdemeanors, which are punishable by a maximum two years imprisonment in the penitentiary, are not infamous crimes that disqualify a person from voting and holding office. *Chiodo*, 846 N.W. 2d at 856 (Cady, C. J., for the plurality), 863 (Mansfield, J., for the special concurrence).

39. In the same case, a four justice majority (the plurality and the dissent, authored by Justice Wiggins), agreed that the Iowa Constitution deprived the legislature of the power to define "infamous crime" as used in Art. II, section 5. *Chiodo*, at 852 (Cady, C.J., for the

plurality) ("The legislature may not add to or subtract from the voter qualifications under the constitution") (citing *Coggeshall v. City of Des Moines*, 138 Iowa 730, 737, 117 N.W. 309, 311 (1908); 855 (Cady, C.J., for the plurality)("[T]he drafters at our 1857 constitutional convention intended to deprive the legislature of the power to define infamous crimes."); 864 (Wiggins, J., dissenting) ("First, I agree with the plurality that the legislature cannot write a constitutional definition of 'infamous crime' by its enactment of Iowa Code §39.3(8) (2014). The Legislature cannot disqualify a voter by defining 'infamous crime' under our constitutional scheme because the constitution defines who is and who is not an eligible elector.") (also citing *Coggeshall*, 138 Iowa at 744.)

40. Finally, the three-justice plurality determined that the term "infamous crime" was distinct in meaning from the term "felony," and that not all felonies are necessarily infamous crimes. *Id.* at 856-57. The text, placement, and legislative history of the Infamous Crimes Clause suggest that Iowa's constitutional founders intended it as a regulatory (rather than punitive) measure to ensure the integrity of the electoral process. *Id.* at 855-56.

41. Therefore, there are two distinct categories of felonies as relating to the right to vote under the Iowa Constitution. There is one category consists of all felonies that are infamous crimes serving to disqualify a voter, and there is a second category of felonies which are not infamous crimes which do not disqualify a voter.

42. While the Court did not go so far as to establish what precise test would be used to categorize all felonies as either "infamous," or non-infamous under the Iowa Constitution, the Court did outline those elements of a "nascent test" that would be applied in Iowa to determine which crimes belong to the category of "infamous crimes," and by their exclusion, which crimes do not.

43. The nascent test outlined by the plurality in *Chiodo* requires that in order to be categorized as an infamous crime, an offense must meet each of three criteria:

    (1) The offense is "particularly serious," which the plurality and special concurrence agree excludes any crime classified as a misdemeanor;

    (2) The nature of the offense "reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections," meaning that the crime must have an actual "nexus to preserving the integrity of the election process";

    (3) Finally, the plurality indicates that the crime must involve an element of "specific criminal intent."[3] *Id.* at 856-57.

44. All three requirements of an infamous crime must be met in order to deprive a person of their right as an elector. *See id.* at 856 ("We only conclude that the crime must be classified as particularly serious, *and* it must be a crime that reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections. We can decide this case by using the first part of this nascent definition.") (emphasis added.)

45. However, the plurality left for another day the task of articulating a more precise test to determine which felonies are properly categorized as infamous crimes under the Iowa Constitution, and specifically declined to decide whether the legislative definition of

[3] Although the test put forward by the *Chiodo* plurality opinion is most simply articulated in three parts, it could be argued that the Court intended the third element, requiring specific criminal intent, is a subcategory of the first or second requirements, that the crime be particularly serious or that the offender have a specific criminal intent that goes toward the requirement that the crime have a nexus to voting and elections. The analysis found in this petition applies equally to either formation of the test.

"infamous crime" under Iowa Code §39.3(8)—which includes all state and federal felonies—is unconstitutional. *Id.* at 857.

46. Instead, the Court outlined the three judicial approaches taken in other jurisdictions to determine which felonies belong to the category of infamous crimes, and which felonies belong to the category of non-infamous crimes:

> (1) Some courts have settled on a standard that defines an "infamous crime" as an "affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections." *Snyder,* 958 N.E.2d at 782; *see also Otsuka,* 51 Cal.Rptr. 284, 414 P.2d at 422 ("[T]he inquiry must focus more precisely on the nature of the crime itself, and determine whether the elements of the crime are such that he who has committed it may reasonably be deemed to constitute a threat to the integrity of the elective process.").
> (2) Other courts limit the definition to a "felony, a *crimen falsi* offense, or a like offense involving the charge of falsehood that affects the public administration of justice." *Commonwealth ex rel. Baldwin v. Richard,* 561 Pa. 489, 751 A.2d 647, 653 (2000).
> (3) Still other courts establish the standard at crimes marked by "great moral turpitude." *Washington,* 75 Ala. At 585.
>
> *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 856 (Iowa 2014), *as corrected (Apr. 16, 2014).*

(enumeration added).

47. The Court declined to conclusively articulate which judicial approach would be most appropriate to take in light of Iowa's constitutional jurisprudence and history. *Chiodo*, 846 N.W.2d at 856 ("Considering the crime at the center of this case, we need not conclusively articulate a precise definition of 'infamous crime' at this time.")

48. However, the plurality found persuasive *Snyder v. King*, 958 N.E.2d 764 (Ind. 2011), an indication that the first enumerated judicial approach would be most appropriate to take in this case.

49. In *Snyder v. King*, the Indiana Supreme Court reinterpreted its own state constitution's infamous crimes clause. *Id.* at 854-57. The Indiana Constitution was adopted in 1851,

just six years before Iowa's 1957 Constitution was drafted. *Id.* at 854–55. In *Synder*, the Indiana Court stated the test as follows:

> We hold that an infamous crime is one involving an affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections. These types of crimes are "most vile" in that they undermine the system of government established by our Constitution. Persons committing such crimes may be presumed to pose a bona fide risk to the integrity of elections . . . crimes marked by gross moral turpitude alone are not sufficient to render a crime infamous for purposes of the Infamous Crimes Clause.
>
> Prototypical examples of infamous crimes are treason, perjury, malicious prosecution, and election fraud . . . Although most of these examples involve elements of deceit and dishonesty . . . the critical element is that they attempt to abuse or undermine our constitutional government.

Snyder v. King, 958 N.E.2d 764, 781-82 (Ind. 2011).

50. Petitioner's case requires this Court both: (a) to decide which judicial approach to take in categorizing felonies as "infamous" or non-infamous; and (b) to apply through that approach the nascent constitutional test laid out in *Chiodo* that the crime be sufficiently serious, have a sufficient nexus to the regulatory goal of protecting the integrity of elections, and be a specific intent crime. Only in so doing can the Court properly determine if the Petitioner's crime belongs to that category of felonies that are infamous or, instead, if it belongs to the larger category of felonies which are not infamous.

51. Petitioner's crime would not be infamous under any of the three articulated judicial approaches and does not meet the elements of the nascent test articulated by the *Chiodo* plurality.

52. The crime of delivery of a controlled substance would not have been considered an infamous crime by our framers in 1857, had our framers had any concept of such a body

of offenses. In articulating why an OWI 2nd conviction was not an infamous crime, the Iowa Supreme Court noted that "[i]t is not aligned in any way with those crimes [like arson, rape, and "willful and corrupt perjury"] designated by the legislature in 1839 as infamous." *Chiodo*, 846 N.W. 2d at 857 (Cady, C.J., for the plurality)(The plurality is careful to explain that those crimes listed in the 1839 Wisconsin Territory statute are not a precise enumeration of our constitutional definition of infamous crime, but are helpful in deducing our founders' understanding of the meaning of infamous crime in 1857 a generation later). Like the crime of operating a vehicle while intoxicated, delivery of cocaine has no analogue in the crimes understood as infamous by our founders.

53. Indeed, no crime consisting of possession or delivery of a controlled substance could be properly categorized as an infamous crime under the historical test. Delivery, like most drug crimes, is driven by various factors including addiction, poverty, and mental health issues. As a disease, substance addiction is a facet of an individual's health—for which our founders had no concept—not indicative or dispositive of a vile, base, or detestable character. The mass criminalization and incarceration of drug usage is a relatively recent phenomenon without root in our common law; there is no long tradition of treating drug usage and addiction as crimes dating back to our state's founding. Only in the last 40 years during the so-called War on Drugs have such tremendous resources been expended to arrest, convict, and incarcerate people for substance abuse and related behaviors. *See* Heather Schoenfeld, *The Politics of Crime, and Mass Incarceration in the United States,* 15 J. Gender Race & Just. 315 (2012); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 Stan. L. Rev. 1271 (2004); *see also* Mark W. Bennett and Mark Osler, *America's Mass Incarceration: The Hidden Costs*, Minneapolis Star Tribune, June 27, 2013.

54. Furthermore, delivery of a controlled substance has no bearing on, or nexus to, the regulatory purpose of preserving election integrity, as required by the plurality opinion in *Chiodo*. *Chiodo*, 846 N.W.2d at 855-56.

55. Finally, Mrs. Griffin was not convicted of a specific intent crime, because Class C felony delivery of cocaine does not require the state to prove any intent beyond the delivery itself. Unlike general intent crimes, specific intent crimes require that the individual intend some further act or consequence beyond the prohibited action itself. *See Eggman v. Scurr,* 311 N.W.2d 77, 79 (Iowa 1981) ("[O]ffenses which have no express intent elements may be characterized as general intent crimes.") Iowa Code §124.401(1) creates a crime for three categories of behavior: (1) manufacturing a controlled substance, (2) delivering a controlled substance; and (3) possessing a controlled substance with intent to manufacture or deliver a controlled substance. Iowa Code §124.401(1) ("[I]t is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance.") The third category, possession with intent to deliver or manufacture, *is* a specific intent crime, because in order to convict a defendant, the State must prove not only that the defendant possessed the controlled substance, but also that she intended to deliver or manufacture it. However, the first two categories, delivery and manufacturing, are general intent crimes, because they only require the State to prove that there was delivery/manufacturing of a controlled substance, and the defendant's intentions about what happened after delivery are of no consequence. Because Mrs. Griffin pled guilty to delivery of a controlled substance, a general intent crime, her offense cannot meet the third requirement under the "nascent" constitutional test put forth in the *Chiodo* decision.

56. Because Mrs. Griffin's conviction for delivery of less than 100 grams of cocaine is among a category of felonies that do not meet the historical concept of infamous crime at the time of our state's 1857 constitutional convention, as articulated in the nascent test outlined in *Chiodo*, she has not been convicted of an infamous crime. Accordingly, it is an unconstitutional deprivation of her right to vote for the Respondents to enforce Iowa's statutes, regulations, practices, and forms to prohibit her from exercising the franchise.

57. Iowa Code §39.3(8)—as well as related statutes, regulations, practices and forms which disqualify persons convicted of any felony—are unconstitutional as applied to the category of felony crimes, including Mrs. Griffin's offense, that do not meet the definition of infamous crimes under Art. II, Sect. 5 of the Iowa Constitution.

58. Because the crime for which Mrs. Griffin is barred from voting, distribution of less than 100 grams of cocaine, belongs to the category of felonies that are not infamous under the Iowa Constitution, her state constitutional right to vote has been and is being violated.

COUNT II

DENIAL OF DUE PROCESS: GOVERNMENTAL INTERFERENCE WITH FUNDAMENTAL RIGHT TO VOTE

59. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

60. Iowa's Due Process Clause, Article I, Sect. 9 of the Iowa Constitution, provides that "no person shall be deprived of life, liberty, or property, without due process of law."

61. The court applies strict scrutiny to laws and regulations that limit fundamental rights. *See State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005); *State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007); *State v. Krier*, 772 N.W.2d 270 (Iowa Ct. App. 2009). For a government

action to survive strict scrutiny, it must be narrowly tailored to serve a compelling state interest. *Id.; State v. Hartog*, 440 N.W.2d 852, 854 (Iowa 1989).

62. Among the fundamental interests protected by the Iowa Constitution's due process clause is the right of to vote. *Chiodo,* 846 N.W.2d at 848; *Devine v. Wonderlich,* 268 N.W.2d 620, 623 (Iowa 1978). *See also Harper v. Va. State Bd. Of Elections*, 383 U.S. 663, 665-66 (1966); *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)(noting that the right to vote is "a fundamental political right, because [it is] preservative of all rights.") *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" (quoting *Ill. Bd. Of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983)(the right to vote is one of the liberty interests protected by the due process clause); *Harper*, 383 U.S. at 665.

63. Iowa's statutes, regulations, forms, and procedures that limit Mrs. Griffin from voting fail to meet the rigors of strict scrutiny due process analysis under the Iowa Constitution. Compelling governmental interests in regulating voting include "shielding the elector from the influence of coercion and corruption, protecting the integrity of the ballot, and insuring the orderly conduct of elections." *Chiodo*, 846 N.W.2d at 856. Thus, statutes limiting the franchise to those electors entitled to vote under our state constitution would serve a compelling governmental interest. To survive the due process inquiry, however, those statutes must be sufficiently narrowly tailored to meet that interest without serving to "subvert or impede" the right of qualified electors to vote. By including all felonies, not just those which are infamous, under Article II, section 5, the governing Iowa statutes, regulations, forms and procedures are not narrowly tailored to

accomplish a compelling governmental interest, because they unnecessarily block thousands of constitutionally qualified Iowa electors of their right to vote.

64. Because of the Respondents' enforcement of the state's various prohibitions on voting and candidacy by Iowans who have completed felony convictions belonging to the category of felonies that do not meet the constitutional definition of "infamous crime," Mrs. Griffin has been denied the fundamental right of franchise, and has been denied due process of law in violation of Art. I, sect. 9 of the Iowa Constitution.

PRAYER FOR RELIEF:
DECLARATORY JUDGMENT AND SUPPLEMENTAL INJUNCTIVE AND MANDAMUS RELIEF

65. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

66. This matter is appropriate for declaratory relief pursuant to Iowa Rules of Civil Procedure 1.1101 et seq. and granting such relief would terminate the legal dispute that gave rise to this Petition.

67. This matter is also appropriate for permanent injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501 et seq. Absent injunctive relief, Mrs. Griffin will continue to suffer irreparable injury for which there is no adequate remedy at law for every future election in this state for which she would otherwise be able to exercise her fundamental right to vote.

68. Last, this matter is appropriate for mandamus relief pursuant to Iowa Rule of Civil Procedure 1.1106, Iowa Code § 661.1 et seq., and the common law, to ensure that the Respondents fulfill their duties to allow the Petitioner to register to vote, to vote, and to count her ballot when validly cast. The Petitioner's right to vote and due process right

under the Iowa Constitution are directly damaged by the nonperformance of such duty by the Respondents.

WHEREFORE, the Petitioner respectfully urges this Court to enter judgment as follows.

(1) Declaring that:

Iowa's statutes, regulations, forms, and processes that prohibit from voting and holding public office Iowans who have completed sentences for crimes classified as felonies—are invalid and unconstitutional as applied to Mrs. Griffin, because Mrs. Griffin's felony conviction of delivery of less than 100 grams of cocaine is among a category of felonies that do not meet the constitutional threshold of infamous crimes;

(2) Enjoining the Respondents from:

a. Refusing to allow Mrs. Griffin to register to vote, cast a ballot, have that ballot counted, and run for public office on the basis of her felony conviction; and from

b. Criminally prosecuting for election misconduct, registration fraud, voter fraud, perjury, or otherwise imposing civil or criminal sanctions on Mrs. Griffin on account of voting with a felony conviction of a crime that belongs to the category of felonies which are not infamous, without first having her right to vote restored by the Governor;

(3) Issuing a Writ of Mandamus requiring that:

the Respondents immediately fulfill their duties to register Mrs. Griffin to vote upon submission of her voter registration form and to count her ballot once cast

as they would any other voter not disqualified on account of conviction of an infamous crime in upcoming elections held in our state;

(4) For Petitioner's costs incurred herein; and,

(5) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Rita Bettis
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ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent Denise Fraise by depositing a copy thereof in the U.S. Mail, postage prepaid, in an envelope addressed to her attorney on the 26th day of February 2015, as follows:

Michael P. Short
Lee County Attorney
25 N. 7th St., P.O. Box 824
Keokuk, Iowa 52632

The foregoing instrument was served upon Respondent Paul Pate by the EDMS to his attorneys of record.

Signature: /s/ Rita Bettis
Rita Bettis

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. PAUL PATE, in his official capacity as the Iowa Secretary of State and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa, Respondents.	No. EQCE077368 **RESPONDENT PATE'S ANSWER**

COMES NOW Iowa Secretary of State Paul Pate and for his Answer to Petitioner's First Amended Petition for Declaratory Judgment and Supplemental Injunctive and Mandamus Relief respectfully states:

PARTIES

1. Denied for lack of information.

2. Admitted as to Secretary Pate's statutory duties. Respondent Pate further admits that the Petitioner was charged with perjury. The remainder of the allegations are denied.

3. Admitted as to Auditor Fraise's statutory duties. The remainder of the allegations are denied for lack of information.

JURISDICTION AND VENUE

4. Admitted.

5. Admitted.

STATEMENT OF THE CASE

6. Admitted.

OPERATIVE FACTS

7. Admitted.

8. The existence and term of Executive Order Number 42 are admitted. The remainder of the allegations as to the effect of Executive Order Number 42 are denied for lack of information.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied.

15. Denied for lack of information.

16. Admitted.

17. Admitted.

18. Denied for lack of information.

19. Denied for lack of information.

20. Denied for lack of information.

21. Admitted.

22. Denied for lack of information.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted that state legislative districts and Congressional districts are drawn by the non-partisan Legislative Services Agency on the basis of population. The remainder of the allegations are denied for lack of information.

32. Denied for lack of information.

33. Admitted.

COUNT I

34. Denied.

35. Admitted.

36. Admitted that Petitioner accurately quotes the *Chiodo* decision.

37. Denied.

38. Admitted that the Iowa Supreme Court determined that aggravated misdemeanors are not "infamous crimes" under the Iowa Constitution.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Admitted that the plurality declined to opine whether the statutory definition of infamous crime is unconstitutional. The remainder of the allegations are denied.

46. Denied.

47. Denied.

48. Denied.

49. Admitted that the Petitioner accurately quotes from the *King* decision.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

COUNT II

59. Denied.

60. Admitted.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

PRAYER FOR RELIEF

65. Denied.

66. Admitted that declaratory relief is the proper remedy if Petitioner's legal claim is correct.

67. Denied. Even if Petitioner is successful on her request for declaratory relief, injunctive relief is unnecessary to enforce this Court's order and/or protect the Petitioner's rights.

68. Denied. Even if Petitioner is successful on her request for declaratory relief, mandamus is unnecessary to enforce this Court's order and/or protect the Petitioner's rights.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

JEFFREY S. THOMPSON
Solicitor General of Iowa

/s/ Meghan L. Gavin

MEGHAN L. GAVIN
Assistant Attorney General
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ATTORNEYS FOR RESPONDENT PATE

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 STIPULATED/JOINT STATEMENT OF UNDISPUTED FACTS

COME NOW, all the parties in the above captioned case, and stipulate to the following statement of undisputed facts pursuant to Iowa R. Civ. P. 1.981 in support of any respective motions for summary judgment.

UNDISPUTED FACTS

1. Kelli Jo Griffin, age 41, is a resident of Montrose, Iowa, in Lee County. She is married and has four young children, including her stepdaughter. (App. Ex. 1.)
2. Paul Pate is Secretary of State of the State of Iowa. As Registrar, the Secretary of State is responsible for the preparation, preservation, and maintenance of voter registration records, as well as the preparation of precinct election registers for elections. (App. Ex. 2, 11); Iowa Code §47.7 (2014).
3. The Registrar is responsible for maintaining a single, computerized statewide voter registration file, coordinated with other agency databases, "including . . . judicial records of convicted felons" ("felon file"). (App. Ex. 2, 11); Iowa Code §47.7(2)(*a)* (2014).

4. The felon file contains a list provided by the Iowa district court clerks of persons convicted of a felony, as well as a list provided by the Iowa Governor's Office of persons who have had their citizenship rights restored. (App. Ex. 2, 11).
5. Respondent Denise Fraise is the County Auditor for Lee County, Iowa. Auditor Fraise conducts voter registration and elections for Lee County. Auditor Fraise administered the November 2013 city election in Montrose, Iowa, in which the Petitioner voted. (App. Ex. 10, 11.)
6. On February 14, 2001, Mrs. Griffin, then Kelli Jo Saylor, was convicted of possession of ethyl ether in violation of Iowa Code §124.401(4)(c) (2001), a class D felony. (App. Ex. 1, 12.)
7. She received a suspended prison sentence and a term of probation, which she discharged on February 14, 2006. (App. Ex. 1, 12.)
8. On July 4, 2005, former Governor Vilsack signed Executive Order Number 42. Executive Order Number 42 "utilized a process that granted the restoration of citizenship rights automatically." (App. Ex. 5.)
9. Following the completion of her sentence in 2006, Mrs. Griffin received an automatic restoration of her rights as an elector, including the right to vote, by operation of Executive Order Number 42. (App. Ex. 1.)
10. The automatic restoration process created by Executive Order Number 42 remained in effect until January 14, 2011. (App. Ex. 4, 5.)
11. Between the discharge of her sentence in 2006 and January 7, 2008, Mrs. Griffin registered to vote and voted in an August 8, 2006 local option sales and service tax for schools election and the November 7, 2006 general election. (App. Ex. 16)

12. On January 7, 2008, Mrs. Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, in violation of §124.401(1)(c)(2)(b) (2008), a Class C felony. She was given a suspended sentence and was placed on probation for 5 years. (App. Ex. 3, 13.)
13. Mrs. Griffin successfully discharged her sentence on January 7, 2013. (App. Ex. 15.)
14. On January 14, 2011, Governor Branstad Signed Executive Order Number 70, which revoked Governor Vilsack's Executive Order Number 42. (App. Ex. 4.)
15. Executive Order Number 70 replaced the system of automatic restoration of the rights of an elector, including the right to vote, with a process in which all people with a felony conviction must apply for restoration of their rights as electors, including the right to vote. (App. Ex. 4, 5.)
16. Pursuant to Executive Order Number 70, applicants must obtain and submit to the Governor's office:
    a. An official DCI background check, which costs $15.00. (App. Ex. 6, 7.)
    b. A multi-page application form. (App. Ex. 6.)
    c. Documentation of court costs, restitution, and fines. Applicants are required either to demonstrate full payment of court costs, restitution, and fines, or that the applicant is current on payment of court costs, restitution, and fines, and provide documentation of payments and an explanation of payments and why they are not completed. (App. Ex. 6, 8.)
17. On November 5, 2013, Mrs. Griffin registered to vote and cast a ballot in an uncontested city election held in Montrose, Iowa. (App. Ex. 1, 9.)
18. Auditor Fraise identified Mrs. Griffin's ballot and, after running her information through the voter registration program at the Lee County Auditor's Office,

determined that Mrs. Griffin was ineligible to vote because of her prior felony conviction. (App. Ex. 10.)

19. On December 16, 2013, the State charged Mrs. Griffin with Perjury, a class D felony, for registering to vote and voting in the November 5, 2013 municipal election, in violation of Iowa Code §720.2 (2013). (App. Ex. 1, 14.)
20. Mrs. Griffin pleaded not guilty. (App. Ex. 1, 14.)
21. On March 19-20, 2014, Mrs. Griffin was tried by jury in Lee County. (App. Ex. 1, 164)
22. At trial, Mrs. Griffin testified that she advised by her defense attorney that her voting rights would be restored by the Governor's Office through the automatic restoration process upon completion of her criminal sentence, including any period of probation or parole. (App. Ex. 1, 9.)
23. On March 20, 2014, the jury acquitted Mrs. Griffin of perjury related to registering to vote and voting. (App. Ex. 1, 14.)
24. But for her 2008 felony conviction, Mrs. Griffin satisfies the requirements to register to vote under Iowa's existing statutes and regulations (App. Ex. 1.)
25. Mrs. Griffin has not applied for a restoration of her right to vote by the Governor of Iowa subsequent to her 2008 felony conviction, nor otherwise had her right to vote restored automatically by the Governor of Iowa following the discharge of her sentence in 2013, by which time Executive Order 70 was in effect. (App. Ex. 1, 2.)
26. Mrs. Griffin now wishes to register to vote and vote in elections that impact her, her family, and her community without fear of subsequent criminal prosecution. (App. Ex. 1.)

Respectfully submitted,

/s/Rita Bettis
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/s/ Jeffrey S. Thompson

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ATTORNEY FOR RESPONDENT FRAISE

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 15th day of May 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

/s/Rita Bettis

Signature of person making service.

By deposit in the U.S. mail:

Michael P. Short
Lee County Attorney
25 North 7th St.,
PO Box 824
Keokuk, IA 52632

Attorney for Respondent Denise Fraise

By EDMS:

Jeffrey Thompson
Meghan Gavin
Iowa Attorney General's Office
1305 Walnut St.
Des Moines, IA 50319

Attorneys for Respondent Paul Pate

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 STIPULATED/JOINT APPENDIX to STIPULATED/JOINT STATEMENT OF UNDISPUTED FACTS

COME NOW, all the parties in the above captioned case, and submit this Stipulated Joint Appendix to their Stipulated Joint Statement of Undisputed Facts in support of any respective motions for summary judgment.

7	Criminal History Record Check Billing Form, which is required paperwork in the current Streamlined Application for Restoration of Citizenship Rights, and which costs $15 per request.	016
8	Frequently Asked Questions Regarding Restoration of Citizenship Rights, stating "Any person convicted of a felony is barred from voting or holding office. In order to vote or hold public office, a person convicted of a felony must apply to the Office of the Governor for restoration of citizenship rights – right to vote and hold public office and have the Governor grant a restoration."	017
9	Relevant sworn testimony of Kelli Griffin, State v. Griffin, No. FECR 008508, Transcript of Jury Trial03/19-03/20/2014.	021
10	Relevant sworn testimony of Denise Fraise, State v. Griffin, No. FECR 008508, Transcript of Jury Trial03/19-03/20/2014.	044
11	Relevant sworn testimony of Sarah Reisetter, State v. Griffin, No. FECR 008508, Transcript of Jury Trial03/19-03/20/2014.	053
12	Publicly available court records relating to 2001 felony conviction	058
13	Publicly available court records relating to 2008 felony conviction	062
14	Publicly available court records relating to 2014 trial and acquittal for perjury related to voting in 2013 election	065
15	Relevant sworn testimony of Heather Jones, State v. Griffin, No. FECR 008508, Transcript of Jury Trial, 03/19-03/20/2014.	069
16	2006 Voting History Report	072

Respectfully submitted,

/s/Rita Bettis
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ATTORNEY FOR RESPONDENT FRAISE

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 15th day of May 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

/s/Rita Bettis

Signature of person making service.

By deposit in the U.S. mail:

Michael P. Short
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PO Box 824
Keokuk, IA 52632

Attorney for Respondent Denise Fraise

By EDMS:

Jeffrey Thompson
Meghan Gavin
Iowa Attorney General's Office
1305 Walnut St.
Des Moines, IA 50319

Attorneys for Respondent Paul Pate

EXHIBIT 1

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN,

Petitioner,

vs.

PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa,

Respondents.

EQUITY CASE
NO. EQCE 077368

AFFIDAVIT OF PETITIONER

AFFIDAVIT OF KELLI JO GRIFFIN

STATE OF IOWA)
)
COUNTY OF LEE)

I, Kelli Jo Griffin, being duly sworn, depose, and state that:

1. I am a United States citizen.
2. I am 41 years old.
3. I am not currently judged by a court to be incompetent to vote.
4. I reside at [redacted] Street in Montrose, Iowa.
5. I have lived in Iowa all of my life.
6. I do not claim the right to vote anywhere else but the precinct associated with my residential address.
7. On January 7, 2008 I entered a guilty plea and was convicted of delivery of less than 100 grams of cocaine under Iowa Code Section 124.401(1)(c)(2)(b). I was given a suspended sentence and placed on probation for 5 years, which I successfully discharged on January 7, 2013.
8. At the time I pled guilty in 2008, my defense attorney informed me that my right to vote would be restored automatically upon completion of my sentence of probation.

9. Prior to my 2008 conviction, I had been convicted of possession of ethyl ether under Iowa Code Section 124.401(4)(c) (2001). I received a suspended prison sentence and a term of probation for that conviction, which I successfully discharged in 2006. After I discharged that sentence, my right to vote was automatically restored by the Governor in 2006. I did not have to make an application or file any paperwork to get my right to vote restored.

10. I have no other prior felony convictions.

11. My convictions were related to my past problems with substance abuse, which resulted in part from my experiences as a survivor of sexual and physical abuse. I have worked hard to recover and to rebuild my life to a life that I am proud of now. A big part of my success was meeting and marrying my current husband and having our family. In addition, I have been an active member of my community and helped other women who are survivors of domestic abuse and sexual assault. Along with my husband, I am a full-time caregiver and parent to four young children, including my stepdaughter. I am active in their school lives and extracurricular activities in the community. In addition, I have done considerable volunteering at a child abuse prevention center and women's drug treatment center, and have spoken to women who are domestic violence and rape survivors like me at the domestic violence shelter in Ottumwa, Iowa. I am a room mom in my daughter's school, and go on most of the field trips. We are active in our church. I want to have a say in the school, community, and state through voting.

12. Voting is important to me. On November 5, 2013, I registered and voted in an uncontested local election in Montrose, Iowa. I brought my four children to the polling site with me in order to teach them about the importance of voting. Our oldest child, who was then eight years old, had learned recently about voting in school and I wanted to show her how the process worked.

13. When I cast my vote, I was unaware of Governor Branstad's Executive Order Number 70, which ended the system of automatic restoration of voting rights.

14. At the time I voted in 2013, I believed I was eligible to vote.

15. I did not became aware of Governor Branstad's Executive Order Number 70 until after I voted in the 2013 election in Montrose. Shortly after that, I was contacted by a Division of Criminal Investigation agent and investigated for voting.

16. On December 16, 2013, I was charged with Perjury in violation of Iowa Code 720.2 (2013) for registering to vote and voting in the November 5, 2013 municipal election.

17. My husband and I hired an attorney to defend me against the charges, and I entered a plea of not guilty. We went to trial, which occurred on March 19 and 20, 2014.

18. The jury acquitted me on March 20, 2014.

19. Now, I fear that the state will not allow me to vote, or will not count my ballot once cast, on account of my January 7, 2008 felony conviction of delivery of less than 100 grams or less of cocaine.

20. I am afraid that if I register to vote or vote, I will be criminally prosecuted.

21. I have not applied for or received a restoration of my right to vote from the Iowa Governor following my 2008 felony conviction.

22. I view voting as an important part of being a productive member of my community and I would like to exercise my right to vote in upcoming elections.

Kelli Jo Griffin

Kelli Jo Griffin, Affiant

Subscribed and sworn to before me on this 10th day of April, 2015.

Stacy Hymes

NOTARY PUBLIC

EXHIBIT
2

Terry E. Branstad
GOVERNOR

OFFICE OF THE GOVERNOR

Kim Reynolds
LT. GOVERNOR

AFFIDAVIT

I, Rebecca Elming, do solemnly swear and state the following is true to the best of my knowledge and belief:

1. I have access to the record of applicants for Executive Clemency, which is maintained by the Governor's Office.
2. I have searched the records from January 7, 2008 to present and do not find any record granting Kelli Jo Griffin, a/k/a Saylor, a/k/a Heckart a restoration of citizenship rights, firearm rights, or a pardon.

Rebecca Elming
Governor's Office
State Capitol
Des Moines, IA 50319

State of Iowa)
)
County of Polk)

On this second day of February, 2014, before me, a Notary Public in and for Polk County, personally appeared Rebecca Elming known to me by the person described in and who executed the foregoing instrument, and acknowledged this execution to be her free act and deed.

NOTARIAL SEAL IOWA
MARGARET J. HOUGH
COMMISSION NO. 223201
MY COMMISSION EXPIRES
2-22-14

Notary Public

EXHIBIT 3

IN THE IOWA DISTRICT COURT FOR HENRY COUNTY

THE STATE OF IOWA,

-vs-

FECR05995

KELLI JO SAYLOR,

Defendant.

JUDGMENT ENTRY

Defendant previously entered a plea of guilty and appeared today with Defendant's attorney, Alan Waples. Also present was prosecuting attorney, Ed Harvey.

With no cause being shown when specifically requested why sentence should not be pronounced, and based upon the reasons dictated into the record by the Court, the Court concludes that the following order and terms and conditions of probation are appropriate under the facts and Sections 901.5 and 907.5

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

1. The Defendant is convicted of: **Delivery of 100 Grams or Less of Cocaine, in violation of Section 124.401(1)(c)(2)(b), a Class C felony, committed on or about October 31, 2006 through February 28, 2007.**

Defendant is committed to the custody of the Director of the Iowa Department of Corrections for a term of no more than ten years. The Iowa Medical and Classification Center at Oakdale, Iowa is designated as the reception center to which the defendant is to be delivered by the Sheriff. Pursuant to Section 903A.2(1), the defendant shall receive credit for time served.

Pursuant to Section 124.413 of the Code of Iowa the Defendant shall not be

eligible for parole until Defendant has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law.

The sentence of imprisonment just imposed shall be and the same is suspended pending the Defendant's future good behavior and the Defendant is placed on probation under the direction and supervision of the Eighth Judicial District Department of Correctional Services for not less than five years subject to the terms and conditions set by the Court and the Department, which shall include the Defendant provide four random hair tests (for drugs) per year, at her expense, during the first three years of probation.

2. Pursuant to Iowa Code Section 907.14, defendant shall pay a fine in the amount of $1,000.00 with applicable surcharge.

3. Defendant shall pay a Law Enforcement Initiative Surcharge of $125.00.

4. Pursuant to Section 815.9, defendant shall pay restitution for attorney fees in the amount of $1,600.00.

5. Defendant shall pay a Drug Abuse Resistance Education surcharge of $10.00

6. Defendant shall pay the costs of this prosecution in the amount of $130.00.

7. Defendant shall submit a physical specimen for DNA profiling pursuant to Iowa Code Sections 81.2 & 901.5(8A)(a).

8. IT IS FURTHER ORDERED pursuant to Section 901.5(10), the State Department of Transportation shall revoke the Defendant's driver's license or motor vehicle operating privilege for a period of 180 days, or delay the issuance of a motor vehicle license for 180 days after the defendant is first eligible if the defendant has not

been issued a motor vehicle license, that the 180-day revocation period shall not begin until all other suspensions or revocations have terminated, and that the Department shall not issue a temporary restricted license to the defendant during the revocation period without further order by the Court.

9. Any appearance bond is exonerated and bond on appeal is fixed in amount of $5,000, cash or surety.

Dated: January 7, 2008.

Cynthia H. Danielson
Judge, Eighth Judicial District

CERTIFICATE OF SERVICE: The undersigned certifies that a true copy of this document was served on each person named (and checked) below, including attorneys of record, or the parties where no attorney is of record, by enclosing this document in an envelope addressed to each named person at the respective addresses disclosed by the pleadings of record herein, with postage fully paid, by depositing the envelope in a United States depository or hand delivered via courthouse mail on: January 1-7-08, 2008.

____County Attorney
____Alan Waples
____Correctional Services
____IDOT
____Court Administrator Case Coordinator
HCS

Signed: _____

EXHIBIT 4

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SEVENTY

WHEREAS, the act of filing an application for restoration of the rights of citizenship is an important and necessary aspect of an offender's process of reintegration into society; and

WHEREAS, the payment of restitution owed by an offender after having been completely discharged from criminal sentence is an important component in determining if the restoration of rights of citizenship is appropriate; and

WHEREAS, offenders ought to fulfill their financial obligations to pay court costs and fines, and the restoration of the rights of citizenship process can serve to address the problem of unpaid obligations by facilitating the payment of court costs and fines; and

WHEREAS, the Constitution of the State of Iowa and the Iowa Code provide an appropriate process and necessary flexibility to ensure that the process for restoration of citizenship rights is just; and

WHEREAS, Executive Order Number 42, dated July 4, 2005, issued by Governor Thomas J. Vilsack utilized a process that granted the restoration of citizenship rights automatically; and

WHEREAS, Article IV, section 16 of the Constitution of the State of Iowa empowers the Governor with authority to restore the rights of citizenship that were forfeited by reason of conviction.

Now, therefore, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the power and authority vested in me by the Constitution and Laws of the State of Iowa, do hereby order that:

I. Executive Order Number 42, dated July 4, 2005, issued by Governor Thomas J. Vilsack, shall be rescinded.

II. Nothing in this Order shall affect the restoration of the rights of citizenship granted prior to the date of this Order.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of January, in the year of our Lord two thousand eleven.

TERRY E. BRANSTAD
GOVERNOR

ATTEST:

MATTHEW SCHULTZ
SECRETARY OF STATE

EXHIBIT
5

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FORTY-TWO

WHEREAS, the right to vote is the foundation of a representative government; and

WHEREAS, under the Constitution of the State of Iowa, an individual convicted of a felony or aggravated misdemeanor is denied the right to vote, a disability which may continue long after a sentence has been fully served; and

WHEREAS, tens of thousands of Iowans who are living, working, and paying taxes in the state are denied the right to vote as a result of a prior conviction; and

WHEREAS, disenfranchisement of offenders has a disproportionate racial impact thereby diminishing the representation of minority populations; and

WHEREAS, research indicates ex-offenders that vote are less likely to re-offend; and

WHEREAS, restoration of the right to vote is an important aspect of reintegrating offenders in society to become law-abiding and productive citizens; and

WHEREAS, Iowa is one of only five states that does not currently provide an automatic process for restoring voting rights for offenders upon discharge of their sentences; and

WHEREAS, the current means by which offenders seek to have their rights restored is unnecessarily time consuming and not used by all offenders that are eligible; and

WHEREAS, Article IV, section 16 of the Constitution of the State of Iowa authorizes the Governor of Iowa to restore the rights of citizenship that were forfeited by reason of conviction.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the Constitution of the State of Iowa, do hereby order and direct as follows:

I. The rights of citizenship, including that of voting and qualification to hold public office, which were forfeited by reason of conviction shall be restored for all offenders that are completely discharged from criminal sentence, including any accompanying term of probation, parole, or supervised release, as of July 4, 2005, but have not made an application pursuant to Iowa Code Chapter 914. This executive order shall serve as evidence of restoration of citizenship rights for such individuals.

II. From this date forward, offenders that wholly discharge their criminal sentence, including any accompanying term of probation, parole, or supervised release, will be given consideration for a restoration of citizenship rights without undue delay.

Beginning August 1, 2005, the Director of the Department of Corrections shall submit monthly a record of offenders meeting this criterion to the Governor's Office. The list of eligible offenders, along with any recommendations made pursuant to Iowa Code section 907.9(4), will be reviewed forthwith to determine whether restoration of citizenship rights is warranted.

III. Notwithstanding this executive order, offenders still may make application for a restoration of citizenship rights pursuant to Iowa Code Chapter 914. All applications, unless withdrawn, will be processed according to the procedures set forth in Chapter 914 of the Code of Iowa.

IV. This executive order, and all future restorations of citizenship rights, shall not include rights with respect to the receipt, transportation, or possession of firearms as provided by federal law or Chapter 724, Weapons, of the Code of Iowa, nor shall it relieve an offender of any unpaid restitution, fine, or other financial obligation resulting from a conviction.

V. This executive order, and all future restorations of citizenship rights, shall not be construed as a pardon or as a remission of guilt or forgiveness of the offense and shall not operate as a bar to greater penalties for second offenses or a subsequent conviction as a habitual criminal.

Nothing in this executive order shall be construed to contravene any applicable state or federal law.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 4th day of July, in the year of our Lord two thousand five.

THOMAS J. VILSACK
GOVERNOR

ATTEST:

CHESTER J. CULVER
SECRETARY OF STATE

EXHIBIT
6

Streamlined Application for Restoration of Citizenship Rights
(Right to Vote and Hold Public Office)

READ CAREFULLY. IF YOU DO NOT COMPLETE THE APPLICATION IN FULL, IT WILL BE RETURNED TO YOU WITHOUT PROCESSING.

General Information: A restoration of citizenship restores the right of a person to vote and hold public office. This is not an application for pardon, commutation or a special restoration of citizenship rights (firearms). If you would like to apply for pardon, commutation or a special restoration of citizenship rights (firearms), you must submit a different application, which can be found on the Governor's website at www.governor.iowa.gov/ or by contacting the Governor's Office at 515/281-5211.

Who may apply: An individual convicted in Iowa State Court, Federal Court, and a court outside of Iowa may apply to have their right to vote and hold public office restored.

How to obtain your restoration of Citizenship Rights:

(1) Complete the application attached.
(2) Sign the release of information attached to the application.
(3) Submit documentation of your court costs, restitution, and fines.
- **Completed payment**: If you have completed your payment of court costs, restitution, and fines you must submit documentation verifying your payment. You may call the courthouse of your conviction for verification or call your local Community Based Corrections Office for assistance. To find information regarding your courthouse or your local Community Based Corrections Office, you may call 515/725-5701.
- **Still working on payment**: If you are current on your payment of court costs, restitution, and fines and continue to pay these costs in good faith, you must submit documentation of your payments along with an explanation of your payments and why they are not completed. You may call the courthouse of your conviction for verification or call your local Community Based Corrections Office for assistance. To find information regarding your courthouse or your local Community Based Corrections Office, you may call 515/725-5701.

(4) You must submit an Iowa Criminal History Record. To request an Iowa Criminal History Record, contact:
Iowa Division of Criminal Investigation
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515/725-6066

Mail: (1) Your completed application, (2) Release, (3) Documentation verifying the payment of your court costs, fines and restitution; and (4) Iowa Criminal History Record, and send it to:

Legal Counsel
Governor's Office
State Capitol Building
Des Moines, Iowa 50319

Questions: You make call 515/281-5211 or visit the "Frequently Asked Questions" at: https://governor.iowa.gov/constituent-services/restoration-of-citizenship-rights/.

****Checklist of Materials****

(Make sure all items are enclosed in your application)

☐ *Step 1* Complete, sign, and date application

- Make sure you answer all of the questions.
- You may call Iowa Department of Corrections at 515/725-5701 to obtain the phone number for your local Community Based Corrections Office to help you fill out the application.

☐ *Step 2* Sign the Release attached to the application

☐ *Step 3* Enclose Proof of payment of court costs, fines, and restitution

- You may call Iowa Department of Corrections at 515/725-5701 to find where you can locate this information.

☐ *Step 4* Enclose a Current Iowa Criminal History Record

- You may call Iowa Department of Criminal Investigations at 515/725-6066 to obtain your Iowa Criminal History.

☐ *Step 5* Place the information from Steps 1, 2, 3, and 4 into an envelope and mail it to:

Legal Counsel
Governor's Office
State Capitol Building
Des Moines, Iowa 50319

☐ *Step 6* Make a copy of the application and material submitted for your records.

- ***Failure to disclose true and accurate information may affect your application.***
- ***There is no application fee for clemency.***

TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

Application for Restoration of Citizenship Rights - Right to Vote and Hold Public Office

(Application current as of April 17, 2014)

TO: Governor Terry E. Branstad, I hereby make application for Restoration of Citizenship Rights (Right to Vote and Hold Public Office).

1. Name: _____ Other Names (ie: maiden) _____
2. Address: _____
   Street City State Zip Code County
3. Home Phone: ( ) _____ Work Phone: ( ) _____ Cell Phone: ( ) _____
4. Date of Birth: _____ Place of Birth: _____ Sex: Male/Female
5. Social Security Number: _____ U.S. Citizen (circle one) Yes or No
6. Crime/Offense: _____ Classification of Crime (ie: Class D felony): _____
7. Date of Crime (Month/Day/Year): _____
8. Date of Conviction (Month/Day/Year): _____
9. County and State of Conviction: _____
10. Court in which convicted in: _____
11. Sentence Received: _____
12. Place and Dates of Time Served: _____
13. Beginning and Ending Date of Parole: _____
    or Probation: _____ or both: _____
14. Name and Current Address of Parole or Probation Officer:
    _____
15. Name and Current Address of Prosecuting Attorney:
    _____
16. Name and Current Address of Defense Attorney: _____
17. Name and Current Address of Judge who heard Case: _____
18. Were you ordered to pay court costs? Yes _____ No _____ Amount _____
19. If ordered, amount you have paid: _____
20. Was any restitution ordered? Yes _____ No _____
    Amount ordered: _____ Amount you paid: _____
21. Attorney's fees: _____ Amount you paid: _____
22. Court costs owed: _____ Amount you paid: _____
23. Your address at time charged and convicted: _____

24. Have you ever been **arrested, charged or convicted** of an offense at any other time? (Include deferred judgments. If you were a juvenile at the time of your conviction, what was the disposition of the case? Were the records sealed?) **(Please circle):** Yes / No

25. If the answer to Question #24 is yes, provide the following information for **each** offense. *(Attach additional sheets if needed.)*
    a. Crime or offense: _____
    b. Date of offense: _____
    c. Sentence received: _____
    d. Terms of sentence: _____
    e. County and state where convicted or charged: _____
    f. Place and dates of incarceration and: _____
    g. Dates of probation or parole: _____
    h. Amount of restitution, court costs and attorney's fees ordered and amount paid:
        (1) Restitution ordered: _____ Amount paid: _____
        (2) Court Costs ordered: _____ Amount paid: _____
        (3) Attorney's fees ordered: _____ Amount paid: _____

26. List any alimony or child support payments you were ordered to make: _____
    a. Have you paid all of the alimony and child support you have been ordered to pay? Yes/ No/ Not Applicable
    b. Please list the amount of alimony or child support you are presently paying: _____

27. Have you made a previous application for executive clemency (citizenship, firearms or pardon)? _____
    If yes, when and in what state? _____

28. Did you file federal and state income tax returns for the following years?
    a. This year? _____ Yes _____ No b. Last Year? _____ Yes _____ No
    c. Two Years Ago? _____ Yes _____ No d. Three Years Ago? _____ Yes _____ No
    If you did not file either the federal or state tax return or both, please explain which returns(s) you did not file and why.
    _____
    _____

29. Please state why you believe that you have demonstrated good citizenship such that your citizenship rights (right to vote and hold public office) might be restored by the Governor. *(You may additional sheets of paper if necessary.)*
    _____
    _____
    _____
    _____

I certify, under the penalty of perjury, that my application is true and complete.

_____ Signature of Applicant

_____ Print Name of Applicant

RELEASE

**YOU MUST SIGN AND DATE THIS RELEASE FORM
OR YOUR APPLICATION WILL NOT BE PROCESSED**

I, _____, the undersigned applicant for executive clemency to the Governor of the State of Iowa, do hereby authorize any and all persons, firms or corporations, to release any and all information or documents they may now have or hereinafter receive concerning me.

I authorize the release of said information to the Governor of the State of Iowa, his designee or agent. In granting this release, it is my understanding that the information or documents obtained will be used for the sole consideration of my application for executive clemency.

I further forever hold blameless those persons, firms, corporations and the Governor's Office, who by virtue of this consent may release information as requested.

A photocopy of this release form will be valid as an original, even though said photocopy does not contain an original writing of my signature.

I have read fully and understand the contents of this application and the authorization for release of personal information.

_____
Signature of Applicant

_____
Print Name of Applicant

Date of Application:

_____

EXHIBIT 7

STATE OF IOWA
Criminal History Record Check
Billing Form

Date: _____ **DCI Account Number:** _____

To: **Iowa Division of Criminal Investigation**
Support Operations Bureau, 1st Floor
215 E. 7th Street
Des Moines, Iowa 50319
(515) 725-6066
(515) 725-6080 Fax

From: _____

_____

_____

Phone: _____

Fax: _____

- A **completed Billing Form is required** when submitting record check requests to the DCI.
- **Each last name submitted requires a separate Request Form with payment for each**.
- Only **one Billing Form** is needed when submitting several requests at the same time.
- **Payment must be included** unless a pre-paid account is established.
- All pre-paid accounts must submit an **Account Number**.
- Please **check either Mail Back or Fax Back results; we will not do both**.

Mail Back Results ☐ **Fax Back Results** ☐ *If neither box above is checked, results will be mailed back to the address provided.	**Fee per request** **$15.00** **Number of requests submitted:** **x** **Amount Due:** **$**

METHOD OF PAYMENT

(Checks should be made payable to the Iowa Division of Criminal Investigation)

Check ☐ **#**_____ **Cash** ☐ **Money Order** ☐ **Pre-paid Account** ☐ **Interagency** ☐

MasterCard/Visa/Discover: _____ **Expiration Date:** _____

Cardholder's Name: _____

On the lines provided below, please write the last name(s) of the person(s) you are submitting the record check on. This is important for tracking purposes.

1. _____ **2.** _____ **3.** _____ **4.** _____ **5.** _____

6. _____ **7.** _____ **8.** _____ **9.** _____ **10.** _____

DCI-76 (08/25/10)

EXHIBIT 8

Frequently Asked Questions

(updated April 17, 2014)

(1) Restoration of Citizenship Rights – Right to vote and hold public office
(2) Special Restoration of Citizenship (Firearms Rights)
(3) Pardon
(4) Commutation of Sentence

(1) Restoration of Citizenship Rights – Right to vote and hold public office

What is a restoration of citizenship rights?

The Governor of Iowa may restore an offender's right to vote and hold public office that was forfeited by reason of a conviction.

Who is ineligible to vote because of a prior conviction?

Under Iowa law, anyone convicted of an "infamous" crime loses the right to vote and hold public office. Any person convicted of a felony is barred from voting or holding office. In order to vote or hold public office, a person convicted of a felony must apply to the Office of the Governor for restoration of citizenship rights – right to vote and hold public office and have the Governor grant a restoration.

What impact did the Iowa Supreme Court case *Chiodo v. Panel* have on individuals convicted of aggravated misdemeanors?

As a result of an April 15, 2014 Iowa Supreme Court decision, it is now clear aggravated misdemeanors are not infamous crimes. Therefore, an individual convicted of an aggravated misdemeanor before or after April 15, 2014, has the right to vote and hold office. Persons convicted of misdemeanors, including aggravated misdemeanors, do not need to apply to the Office of Governor to restore the right to vote and hold office -- those rights have not been lost.

What if my conviction was for a federal crime?

If you have been convicted of a federal felony, you are not eligible to vote in Iowa unless you have had your citizenship rights restored. Although the Governor of Iowa cannot grant a full pardon for a federal crime, the Governor can restore your right to vote and hold public office within Iowa.

What if my conviction was in a state court outside of the State of Iowa?

If you have been convicted of a crime outside the State of Iowa, you are not eligible to vote in Iowa unless you have had your citizenship rights restored. Although the Governor of Iowa cannot grant a full pardon for a conviction received outside the State of Iowa, the Governor can restore your right to vote and hold public office within Iowa.

What do I need to do in order to restore my right to vote and hold public office in Iowa?
You must complete the Streamlined Application for Restoration of Citizenship Rights (Right to Vote and Hold Public Office).

Must I complete my court costs, restitution, and fines before I apply?
If you have not completed your court costs but are current on your payment of court costs, restitution, and fines and continue to pay these costs in good faith, you must submit documentation of your payments along with an explanation of your payments and why they are not completed.

When can I apply to have my right to vote and hold public office restored?
An individual may apply to have their right to vote and hold public office restored at any time. An individual must have paid courts costs, fines, and restitution. An individual must submit (1) a completed Streamlined Application for Restoration of Citizenship Rights form, (2) Signed Release, (3) Documentation verifying the payment of your court costs, fines, and restitution, and (4) Iowa Criminal History Record.

If I discharged my sentence before July 4, 2005, how do I provide proof of restoration of citizenship rights?
Offenders who discharged their sentences as of July 4, 2005, will not receive a separate restoration of citizenship certificate. Instead, Executive Order 42, itself, serves as evidence of restoration of citizenship rights for such offenders. A copy of the executive order is available at http://publications.iowa.gov/3762/1/EO_42.pdf.

Is a restoration of citizenship rights the same as a pardon?
No, the executive order, and all restoration of citizenship rights, are not considered a pardon or as a remission of guilt or forgiveness of the offense and will not operate as a bar to greater penalties for second offenses or a subsequent conviction as a habitual criminal. If you wish to seek a pardon, you must obtain and submit an application to the Governor's office.

If I have my citizenship rights restored, do I need to re-register to vote?
Yes. Please contact your County Auditor or the Iowa Secretary of State's office for voter registrations forms. The Iowa Secretary of State's website: http://www.sos.state.ia.us/

How do I get a duplicate restoration of my citizenship rights certificate?
You can obtain a duplicate of your restoration of citizenship rights certificate (right to vote and hold public office) by calling the Governor's Office at 515/281-5211.

What happens if an individual re-offends?
If an offender is convicted of an "infamous crime" after having their citizenship rights restored, they again lose the right to vote and hold public office.

(2) Special Restoration of Citizenship (Firearms Rights)

If you have a State Conviction:

If you would like to apply for restorations of firearms, please follow the instructions to completely and accurately fill out your application. You can obtain the instructions and application at: www.governor.iowa.gov or contact the office by phone at 515/281-3502.

Who can apply for restoration of firearms?

An individual convicted of a criminal offense in the State of Iowa has the right to apply for restoration of his firearm rights, subject any state and federal requirements. Although an individual may submit an application at any time, it is the general policy of the Governor's Office to require at least five (5) years to pass from the date a person is discharged from sentence before granting restoration of firearm rights.

How long does the application process take?

The process can take anywhere from two (2) to three (3) years due to the extensive investigation.

Who cannot have their rights to firearms restored?

Under Iowa Law, a person who has been convicted of a forcible felony, a felony in violation of chapter 124 involving a firearm, or a felony violation of chapter 724 shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms.

(1) An individual convicted of a forcible felony:
- -Felonious child endangerment
- -Assault
- -Murder
- -Sexual abuse
- -Kidnapping
- -Robbery
- -Arson in the first degree
- -Burglary in the first degree

(2) An individual convicted of a felony in violation of Iowa Code § 724 (weapons)

(3) An individual convicted of a felony in violation of Iowa Code § 124 controlled substances involving a firearm

(4) A minor who committed a public offense involving a firearm

Can the Governor restore my rights to firearms if I have a Federal Conviction?

No. Individuals convicted of Federal offenses must apply for a Presidential Pardon through the Pardon Attorney's Office of the Department of Justice in Washington, DC.

Pardon Attorney's Office, U.S. Department of Justice
500 First Street, NW. Suite 400
Washington, DC 20530

Can the Governor restore my rights to firearms if I have a state conviction outside of Iowa?

No. Individuals convicted of a State offense outside of the State of Iowa may contact the State of their conviction for information regarding restoration of firearm rights.

What must I do to restore my firearms rights if I have a state and Federal Conviction?
Follow the instructions above for Federal convictions.

(3) Pardon

When can I apply for a pardon?
Although you may submit an application at any time, it is the general policy of the Governor's Office to require at least ten (10) years to pass from the discharge date for a pardon.

How long does the application process take?
The process for a pardon can take anywhere from two (2) to three (3) years in order to receive a decision from the Governor due to the extensive investigation.

What affect does a pardon have?
A pardon, which if full and unconditional, restores all citizenship rights (right to vote, hold public office, and firearm rights) and relieves an offender from further punishment imposed by reason of a conviction of a criminal offense.

Does a pardon expunge or erase a criminal record?
No. An individual would need to contact an attorney of their choice to pursue expungement of a criminal record through the Judicial System.

(4) Commutation of Sentence

What affect does a Commutation of Sentence have?
A commutation is for an individual who is presently incarcerated and serving an active sentence. A commutation by the Governor commutes or reduces the sentence by any number of years, months, or days, or makes the individual eligible for parole.

If I obtain a commutation of sentence, can I be released from prison?
In some circumstances, yes, an individual may be released from prison after being granted a commutation of sentence.

EXHIBIT 9

IN THE IOWA DISTRICT COURT FOR LEE COUNTY (SOUTH)

STATE OF IOWA,

Plaintiff,

vs.

KELLI JO GRIFFIN,

Defendant.

Cause No. FECR 008508

TRANSCRIPT OF JURY TRIAL

03/19/2014 - 03/20/2014

The following is a transcript of the **JURY TRIAL** held in the above-entitled cause on **March 19-20, 2014,** before the **Hon. Mary Ann Brown,** Judge of the District Court, in the courtroom on the Second Floor of the South Lee County Courthouse, Keokuk, Iowa.

APPEARANCES:

MR. MICHAEL P. SHORT, Lee County Attorney, South Lee County Courthouse, Keokuk, Iowa, appearing on behalf of the State of Iowa.

MR. CURTIS DIAL, Attorney at Law, 401 Main Street, Keokuk, Iowa, appearing on behalf of the Defendant.

NANCY J. DERR, CSR

OFFICIAL SHORTHAND REPORTER

probation in 2008?

A. I'm a stay-at-home mom.

Q. Have you done anything with your time?

A. I -- My daughter's in her second year at [redacted] School. I drive her to and from school every day. I'm a room mom. I go on all field trips. They are active in church. I am part of the Lee County Child Abuse Prevention Council. I was vice president up until recently. I help with Vacation Bible School through Evangelistical (sic) Free Church. My children are also part of [redacted]. I'm also doing adult religion classes to become Catholic because my husband's family's Catholic. I've had annulments, I've went through classes, and on Easter I will take Communion.

Q. And is -- You talked about the volunteering in the school, volunteering with the -- is it the child abuse prevention?

A. Child abuse -- Lee County Child Abuse Prevention Council.

Q. Is that all volunteer work you do?

A. Yes.

Q. And what -- Did you have a title in that program?

A. I was vice president and I also taught a parenting class.

Q. Is that something that's been important to you

given your past?

A. Yes.

Q. So it sounds like 2008 or so, you kind have had a change in life and it's going fairly well, is that a fair statement?

A. Yes.

Q. And as far as the volunteer work that you've done and the religious classes, was that anything that was ordered as part of your probation or was it stuff that you wanted to do?

A. It was stuff I did because I wanted my children to be proud of me.

Q. And as far as the -- Were there any kind of domestic classes that you took for abuse?

A. I see a therapist and I was part of the domestic action group in Ottumwa, but not here.

THE COURT: Pardon me?

THE WITNESS: I was part of a domestic -- like a women's center in Ottumwa, but not here.

THE COURT: That tail end -- And here, you say --

THE WITNESS: In Ottumwa, but not here --

THE COURT: Oh, okay.

THE WITNESS: -- in Keokuk, Iowa.

Q. You said you were part of the woman's shelter in Ottumwa?

A. Right. I also teach parenting classes and parenting classes is not just about keeping children safe but also keeping mothers safe so they can keep their children safe.

Q. In November of 2013, you were off probation?

A. Correct.

Q. Okay. And there was a city election held in Montrose; is that right?

A. Yes.

Q. And did you vote in that city election?

A. Yes.

Q. Why is it that you chose to vote in that city election?

A. Because that's where I live.

Q. Can you tell me about how that came about that you ended up being at the precinct to vote that day?

A. I took my four children there. My stepdaughter is [redacted] school. They were learning about presidents, learning about elections, so I just -- I just voted, I just took them and voted.

Q. I'm going to kind of break that down a little bit. You had four kids with you when you went there?

A. Yes.

Q. Do you remember what time of day it would have been when you got there?

A. After school.
Q. After -- Where does your daughter go to school?
A. My daughter goes [redacted].
Q. What about your stepdaughter?
A. She goes [redacted].
Q. So would you have had to pick up one of them?
A. I picked up both of them.
Q. Which one do you pick up last?
A. [redacted]
Q. So it would have been after [redacted] got out?
A. Correct.
Q. And then did you just go directly to the polling place?
A. Yes.
Q. And where was that located?
A. At the Ivor Fowler building.
Q. In Montrose?
A. Yes.
Q. What happened when you got there?
A. I took all of my kids in and I didn't have a license, so I had to go home and get a license.
Q. So when you got there, did the poll workers ask for a photo ID?
A. Yes, they asked for photo ID. I did not have it and so I put all of my kids back in car seats and went home

and got it.

Q. And then did you come back to the --

A. Yes, I did.

Q. What happened when you got there the second time?

A. I started to register to vote. My kids started being wild because they're yelling and they were asking me questions and I was trying to answer them the best that I could, but --

Q. Where were your kids at at that time?

A. They were running around inside the Ivor Fowler building, they would go and they were running outside because it was -- even though it was November, it was an -- not a freezing day and they were just bored. My experience was not --

Q. You have to speak up --

A. My experience was not a good one, probably, for my younger children who were not interested.

Q. So when this is going on, are you speaking to the poll workers?

A. Yes.

Q. And did they print out some stuff for you to sign?

A. Yes.

Q. Okay. When you gave them your ID, was there any conversation about that?

A. They asked me if I had voted before and I said,

yes, in Des Moines County under a different name.

Q. What name did you give them?

A. Kelli Saylor.

Q. What happened at that point?

A. The person that was taking my information called on her cell phone and talked to someone in Fort Madison, I believe, talked to somebody. I don't know who she talked to.

Q. And was there any indication at that time that there was anything wrong with you voting?

A. They kept -- They put my ID in a scanner and it didn't come out at first and then they -- she got off the phone and she said just to register me as a new voter.

Q. So did you get -- did you have to fill out the new voter registration form?

A. I didn't fill out anything, they did it for me.

Q. Did you get out the little printout things that have been testified to?

A. Yes.

Q. And that had your name and address?

A. Yes.

Q. Was there ever any conversation about whether you could vote as the result of your prior convictions?

A. No.

Q. Did that ever come up at all?

A. No, not in conversation.
Q. The voter registration form that you signed, I believe it had one where you could mark have you been convicted of a felony and that was not checked?
A. Correct.
Q. Why would that have not been checked?
A. Because I didn't know what to mark.
Q. Why is that?
A. 'Cuz I thought my rights had been restored and I didn't think I -- didn't think I needed to mark it.
Q. And was that question ever posed to anyone there?
A. They didn't ask me if I was a felon. It was never -- They didn't ask me those three questions verbally or anything. They were more interested -- They were helping chase my kids around.
Q. And then did you sign the registration form and ultimately vote?
A. Yes.
Q. And that registration affidavit indicates I have not been convicted of a felony or I've received a restoration of rights.
Did you think that you had received a restoration of rights?
A. Yes.
Q. Why is that?

A. Because that's what I was told.
Q. By who?
A. I was told when I had -- when I pled guilty to my felony that I would lose my license for a hundred eighty days and when I was done off probation that I would get my citizenship rights back.
Q. Okay. And do you know if that was on the record or something you would have discussed with your lawyer?
A. It was with my lawyer.
Q. And did the Executive Order come up at that time?
A. I don't know if it was an executive --
THE COURT: Pardon me?
A. I did not know it was called an Executive Order, but Governor Vilsack's changes had been set.
Q. So that you would have had your citizenship rights back once you completed probation?
A. Correct.
Q. And when the Executive Order would have come out, did you -- were you aware of that?
A. It was in all of the newspapers and on the news.
Q. Did you ever become aware that that Executive Order had been rescinded?
A. No.
Q. As far as the time that you were at the polling station, how far away do you live from that polling station?

A. Six blocks.

Q. And so when you originally get there, you get all four kids out of your car to take them in?

A. Correct.

Q. Then you have to go get your ID and come back?

A. Correct.

Q. Do you know how long you're talking from the time you got there the first time until you would have finished at the polling station?

A. Probably 45 minutes to an hour.

Q. And some of that time is driving?

A. Yes.

Q. And then was there some time that would have taken you to go in your house and get your ID?

A. Yes.

Q. When you were there and you discussed with them that you had registered under a prior name, did you indicate where that had been?

A. Des Moines County.

Q. And then was that where you had been living prior to moving to Montrose?

A. Yes, Burlington.

Q. As far as the conversation that you would have had with the poll workers, was there much conversation? Were you guys discussing these forms?

A. No. They asked me the questions, but there wasn't -- I mean, they asked me my name and everything. Is that -- I don't know what you're asking.

Q. Well, it's not where you guys went back and forth about all the questions on these forms?

A. No.

Q. And as far as your reason for voting, you said it's because you live in Montrose?

A. Yes.

Q. And you were showing your stepdaughter some of the procedures?

A. Yes.

Q. When you signed the registration affidavit, were you in any way attempting to deceive the State or defraud the State or lie about anything?

A. No.

Q. At that time did you think that your rights had been restored?

A. Yes.

Q. And at any time when you're on probation, did you have any discussion with Heather Jones about voting rights?

A. No.

Q. And so from the time that you spoke to your lawyer about pleading guilty in 2000 -- probably would have been 2007, until you voted, it had never come up again at all as

far as restoration of citizenship rights?

A. No.

Q. And so you were still relying upon the conversation you had with your lawyer and the Executive Order?

A. Yes.

Q. When was the first time you became aware that you had done anything wrong?

A. When a person called me on my phone stating that he was from the DCI and wanted to speak to me.

Q. And did he indicate that involved voting in an election?

A. Yes.

MR. DIAL: Okay. That's all the questions I have.

THE COURT: Cross-examination, Mr. Short?

CROSS-EXAMINATION

BY MR. SHORT:

Q. Let's start back at the beginning.

You've told us about two felony vio -- convictions, the one in Henry County in 2008 and a prior one. Where was that?

A. Wapello.

Q. What were you convicted of in Wapello County?

A. I don't know what the term was. It was --

Q. How about conspiracy to manufacture meth?

A. No, it was percursors (sic).
Q. Precursors?
A. Sorry, I couldn't remember the word.
Q. Okay. And that's it, right?
A. (Moved head affirmatively.)
Q. And in Wapello County, were you convicted under the name Kelli Jo Smith?
A. No.
Q. Which name?
A. It was Coleman.
Q. Coleman?
A. (Moved head affirmatively.)
Q. C-o-l-e-m-a-n?
A. (Moved head affirmatively.)
Q. What about Monroe County --
THE COURT: I didn't hear the answer. Was there an answer to the spelling?
THE WITNESS: C-o-l-e-m-a-n.
THE COURT: Okay. I didn't hear your answer. Okay.
Q. What about a conviction in Monroe County?
A. It was transferred to Wapello County.
Q. Well, I'm looking at a copy of the Judgment Entry from Monroe County, a judgment for possession of precursors. That says it's concurrent with the Wapello County case, 65 -- or 5969. So there are two separate cases?

A. They were together.
Q. But this -- These two are concurrent, so there's two convictions?
A. They said it would be together.
Q. They're running at the same time, but there's two convictions?
A. Okay.
THE COURT: Pardon me?
THE WITNESS: Okay.
Q. Okay, okay. From the -- I understood you to say that you were never really married to Mr. Heckert?
A. I was married to him, it was not the whole duration of our relationship.
Q. Okay. 'Cuz I note the conviction in Monroe County is Kelli Jo Heckert?
A. Got married in jail, yes.
Q. Pardon me?
A. We were married in jail.
Q. Okay. Now, there are also other convictions, like a Wapello County theft third conviction in January of 2008?
A. Okay.
Q. Yes?
A. Yes.
Q. You told us you're not proud of your life?
A. I'm not.

Q. Before this story broke, Miss Griffin, did you ever discuss your life with your neighbors? Did they know --

A. I've told --

Q. -- you were a convicted drug dealer?

A. I've told my story at parenting classes, to people in treatment centers.

Q. When you went to volunteer at [redacted] Schools, did you tell Mrs. Marsot that you were a convicted drug dealer?

A. No.

Q. When you -- Did you go tell your neighbors, hey, I'm a convicted drug dealer?

A. No.

Q. Was that general knowledge around the city of Fort -- or city of Montrose, that you were a convicted drug dealer?

A. To some people.

Q. To whom?

A. My husband's family.

THE COURT: To who?

THE WITNESS: My husband's family.

Q. But it is not something that you talked about, something that you wanted to be in your past, correct?

A. That I didn't want it to be in my past?

Q. It's -- Was it something that you talked about?
A. No.
Q. Was it something that you wanted to be in your past?
A. Yes.
Q. Okay. As I understand it, you did, in fact, vote in the Montrose election on January -- I'm sorry -- on November 5, 2013, correct?
A. Yes.
Q. And let's go to State's Exhibit Number 2. The signature on two locations on that form, is that your signature?
A. Yes.
Q. Did you fill out that form as indicated?
A. It was stickers.
Q. Well, there are places where you have to use a pen or pencil and make checks?
A. Yes.
Q. You said you were a citizen, you're going to be over 18?
A. Uh-huh.
Q. And then you have a question, let's make sure we get it right, if you have previously been convicted of a felony, have your rights been restored. At this -- We've talked about you being convicted of three prior felonies --

A. Uh-huh.
Q. -- right?
A. Uh-huh.
Q. So doesn't that require either a yes or no answer?
A. I didn't know at the time.
THE COURT: You didn't know what to say -- I --
THE WITNESS: I didn't know.
Q. You didn't know, okay.
So I thought you're telling us here today that you thought by Executive Order 42 your rights had been restored?
A. Right.
Q. So why didn't you put yes?
A. I didn't know why it was there.
Q. So you weren't certain?
A. I didn't know.
Q. You didn't know, okay.
You told them -- You've said that you had voted before under the name Kelli Jo Saylor in Des Moines County. If you look at the form where label two goes, there's a place for previous name, previous address. Did they put Kelli Jo Saylor and a previous Des Moines County address there?
A. No.
Q. Okay. Now, you told us about Executive Order 42, it was in all the newspapers. You read it?

A. I probably saw it on television. I don't remember.

Q. You probably saw it on TV.

You're making a statement under oath that -- that my rights have been restored. Have you ever read the document that you claim restored your rights?

A. No.

Q. Governor Vilsack's order is dated July 4, 2005. Did you know that?

A. Yes.

Q. You knew that, okay.

Paragraph 2: From this date forward, offenders that wholly discharge their criminal sentence, including any accompanied term of probation, parole or supervised release, will be given consideration for restoration of citizenship rights without undue delay. Beginning August 1 of 2005, the Director of the Department of Correctional Services shall submit monthly records of offenders meeting this criteria to the Governor's Office. The list of eligible offenders along with any recommendations made pursuant to Iowa Code Section 907.9(4) will be reviewed forthwith to determine whether restoration of citizenship rights is warranted.

So you said you were relying on Governor Vilsack's Executive Order 42. What recommendation did the Department of Corrections make to the governor --

A. My --
Q. -- on your case?
A. My two previous felonies, I was able to vote.
Q. Okay. But maybe the fact that you had two previous felonies, that might change their recommendation this time? Ever think of that?
A. No.
Q. No?
Did you bother to ask, hey, Heather, what is the Department recommending?
A. No.
Q. Okay. So you're relying on an order you never read, and the terms, once you read them, say that we're going to make a recommendation and a review.
Did the governor ever send you a certificate saying, gee, your citizenship rights are restored?
A. I didn't receive one the first time.
Q. I see.
So you never got anything in writing?
THE COURT: Was there an answer?
Q. Did you get anything in writing?
A. No.
Q. Now, you told us that your attorney told you at time of the guilty plea that your rights would be restored upon completion. Which attorney?

A. Alan Fable.
Q. Pardon me?
A. Alan, his first name is Alan.
Q. And did he do any written record of this?
A. I don't know.
Q. Okay. And it never occurred to you that circumstances may change?
A. I thought it was a law.
Q. It was a law. I thought you said it was an Executive Order?
A. I didn't know there was a difference.
Q. Ah, well, laws change, too, don't they?
A. No one told me.
Q. So let me review. The question about whether or not you were convicted of a felony and your rights were restored, you didn't answer because you weren't certain?
A. Correct.
Q. But down below where you now sign that you affirm that you have never been convicted of a felony or, if you have, your rights been restored, by that time you're certain, is that what you're telling us?
A. I didn't read it.
Q. You didn't read it?
How many places did they tell you, look, it's perjury, you could go to jail over this?

A. They didn't say that.
Q. It says that in black and white, Miss Griffin, three separate places.
A. I didn't read it.
Q. You didn't read it?
Did you read it up here where it says: Have you ever been convicted of a felony?
A. I didn't know the answer to put there because I had had my rights restored.
Q. You didn't know the answer about whether or not you had been convicted of a felony?
A. It doesn't say --
Q. The answer to whether or not you have been convicted of a felony is yes or no?
A. On that paper?
Q. Yes or no, have you been convicted of a felony --
A. Yes.
Q. -- multiple felonies?
So once you say, yes, I've been convicted of a felony, have your rights been restored, yes or no, why did you leave it blank?
A. 'Cuz I didn't know what to put.
Q. Let me suggest another answer to you, Miss Griffin. You moved to Montrose where nobody knew who you were, you changed your name by marriage, and now you've got

the most valuable thing you could have, a reputation that isn't blemished by all of these past crimes, and you want to live that lie, you want to make it appear like you have -- that you're a normal citizen, that you're not a convicted drug dealer, that you have the same rights as everybody else. What about that?

A. I paid my debt.

Q. Well, that isn't the question. You've told us this is a family secret, you don't talk to anybody about it?

A. Well --

Q. This is -- You're in a new community with a new name and now you don't have to live your past, you can escape that, you've got -- you've got the opportunity to be renewed. You don't have to admit that you're a felon, you don't have to, you can just go out and pretend that you're a new person. Isn't that what's going on here, Miss Griffin? That's what you're getting out of this, a new reputation, right?

Your attorney doesn't have the answer to this --

THE COURT: Wait, let's get an answer here to the question.

A. Can you repeat it? I don't know. I don't know what the question --

Q. You don't know?

A. I have no idea what your question is.

Q. Well, what I'm saying, Miss Griffin, is your attorney asked the question what do you get out of this, and I'm --

A. My attorney --

Q. -- giving you the answer to this, a new reputation, a new position, you step away from all your past life, all the terribleness of it, and now you're a new person without that past, you get to pretend that you're something you're not?

A. I don't think I ever pretended I'm something I'm not.

MR. SHORT: Okay. I don't have any other questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. DIAL:

Q. Would somehow voting in the local Montrose city election with the other 18 percent of the people in Montrose give you a new reputation?

A. No.

Q. Would that somehow put your past behind you?

A. No.

Q. And you were asked about your criminal history. You don't dispute your criminal history, do you?

A. No.

Q. And do you have anything to dispute or believe

EXHIBIT
10

IN THE IOWA DISTRICT COURT FOR LEE COUNTY (SOUTH)

STATE OF IOWA,

Plaintiff,

vs.

KELLI JO GRIFFIN,

Defendant.

Cause No. FECR 008508

TRANSCRIPT OF JURY TRIAL

03/19/2014 - 03/20/2014

The following is a transcript of the **JURY TRIAL** held in the above-entitled cause on **March 19-20, 2014,** before the **Hon. Mary Ann Brown,** Judge of the District Court, in the courtroom on the Second Floor of the South Lee County Courthouse, Keokuk, Iowa.

APPEARANCES:

MR. MICHAEL P. SHORT, Lee County Attorney, South Lee County Courthouse, Keokuk, Iowa, appearing on behalf of the State of Iowa.

MR. CURTIS DIAL, Attorney at Law, 401 Main Street, Keokuk, Iowa, appearing on behalf of the Defendant.

NANCY J. DERR, CSR
OFFICIAL SHORTHAND REPORTER

THE COURT: Yes, you may.

MR. SHORT: -- just momentarily?

(Counsel approached the bench and a discussion was held off the record.)

THE COURT: Then, Ms. Reisetter, you may step down. You're free to leave the proceedings if you wish.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: The State may call its next witness.

MR. SHORT: Denise Fraise.

(Witness sworn by the Court.)

THE COURT: And could you spell your first and last name for us?

THE WITNESS: It's Denise, d-e-n-i-s-e; Fraise, f-r-a-i-s-e.

THE COURT: Thank you.

D E N I S E F R A I S E,

called as a witness by the State, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHORT:

Q. Denise, your occupation?

A. I'm the Lee County Auditor.

Q. How long have you been?

A. I was elected two years ago.

Q. And before that, what did you do?
A. I was in the Auditor's Office, I was the elections deputy for --
Q. For how many years --
A. -- approximately 16 years.
Q. What role does the Auditor's Office play in training poll workers?
A. Oh, we are the ones that train the poll workers. We have a training session for approximately one to two hours before each election.
Q. And before they become poll workers, do you go through a more extensive one?
A. No, we don't.
Q. Okay.
A. No, we don't. We --
Q. What type of information do we provide our poll workers? Do we give them any electronics?
A. Any electronics? At the polling place we do, we provided them with a laptop that has a State program on it.
Q. It's -- We heard about the electronic poll book, is that what you provide?
A. We do, yeah. We get that through the State.
Q. How long -- How long have you been --
A. We've had that since 2005. We've had some form of an electronic poll book since 2005. We've been with the

State approximately two years.

Q. Do you -- As an Auditor and before as a deputy doing the election work, do you field election day questions from the various polling places?

A. Yes, I do.

Q. You stay -- You stay open as long as there are people --

A. Yeah.

Q. -- out there voting?

A. Yes, we're there from 6 in the morning until all the equipment is brought back from here in Keokuk. So we're there -- During like a presidential or primary election, we're there till quite late.

Q. The 5th of November, 2013, a city election?

A. That was a city election, yeah.

Q. How busy was that in Montrose?

A. I -- City election and school elections are typically pretty low turnout. I believe the Montrose one was probably a 20 percent turnout --

Q. Okay.

A. -- which is actually high.

Q. Write-in campaigns going on?

A. There was, there was a write-in campaign for a third council person seat.

Q. You are the person who came across an election

information that she provided, wasn't it?

A. It was, that's correct, yes.

Q. Now, the documents that the people -- that get printed out and they sign, how large are those?

A. How large are they?

Q. Yeah, what size are they?

A. They are a label, like probably 2 by 4 -- (indicating) -- like a shipping label.

Q. You gave an interview to a TV crew, didn't you?

A. To the TV crew? On this case?

Q. Yes.

A. To a TV --

Q. About March -- About March 4th, this year?

A. I don't recall doing that.

Q. Well, it was on TV --

A. Okay.

Q. -- you were interviewed, you were asked questions?

A. Okay.

Q. Do you remember that, WGEM?

A. Well, I get called a lot, so --

Q. Well, do you remember the TV camera being there when you were asked questions?

A. On this case, I really do not remember that.

Q. Do you remember saying that when you register to vote, you may not think twice about the forms you're

signing, but you have to read the fine print because you are signing an oath?

A. That would be what I'd said if -- Yes.

Q. That's what you said --

A. Okay.

Q. -- to the news crew, wasn't it?

A. Okay, yes.

Q. What fine print are you referring to?

A. At the bottom of the voter registration form there's a statement that says that if you -- you are signing this, you know, it's completely accurate and you may face up to -- it's $7500 fine and 5 years in prison, is what it says at the bottom of the voter registration form that you fill out when you register.

Q. And you've characterized that as fine print?

A. It's small at the bottom.

Q. So that's how Lee County is telling people that they may go to prison, by fine print?

A. Yeah, it's actually, I think -- believe at the top of the form, too. There's questions that say have you ever been convicted of a felony or have your rights been restored, so it's actually on there twice.

Q. Both times in fine print?

A. Not at the top.

Q. Why didn't --

A. But, actually, I believe it's on there three times 'cuz I think there's another statement right in front of the signature or right above the signature.

Q. So in this case Kelli came in, provided her driver's license number, a photo ID, address, full name, and then once the voting takes place, just based upon that information, you're able to ascertain that she was not eligible to vote?

A. They did not ascertain that she was not able to vote at the polls, no.

Q. That's not my question, though, right?

A. Then ask it again.

Q. Okay. She came in with this information, her driver's license, photo ID, her name, her address, her date of birth; and based upon that information, you were able to ascertain that she was not able to vote, right?

A. No.

Q. Okay. What other information was necessary for you to ascertain whether she was able to vote or not?

A. At the polling place --

Q. I'm not talking about the polling place.

A. That's where she was.

Q. I understand that, but you just testified that, ultimately, you were able to determine whether she was able to vote or not, right?

A. At the office, we were --
Q. Okay.
A. -- uh-huh.
Q. That's what I'm asking you about --
THE COURT: No, I think you said at. You said she came and brought it in, I think.
Q. Okay. That's information she brought to the polling place, right?
A. She did, yes.
Q. But to determine whether she was able to vote or not, you didn't have to go out and get any more information, did you?
A. We do not do that. My gosh, we'd be running around the whole county.
Q. So you took the information that she had provided at the polling place and then, what, a couple days or weeks later --
A. Probably a couple days later then, we went in to put her information into our voter registration program at the office and that's when we discovered that her rights had not been restored.
Q. So that's all it took was the information she had provided?
A. Correct. Yes, we don't have any access to anything else other than what's on our voter registration

system.

Q. So it sounds like the information to determine if Kelli was able to vote or not exists at your office but not at the polling place?

A. In this case, you're correct.

Q. If you can look at that?

(Mr. Dial handed a document to the witness.)

A. Okay.

Q. That's the -- a copy of the documents that were signed; is that correct?

A. That's right.

THE COURT: Which exhibit is that?

MR. DIAL: I'm sorry, Exhibit 2.

Q. Is that the actual size of those items, those things that get printed out, or is that enlarged?

A. It is. No, this is exactly what it looks like.

Q. Am I correct that you don't keep any logs as far as calls that come in from the poll workers with questions that they have?

A. We do not keep a written log, no.

MR. DIAL: Okay. I have no other questions, your Honor.

THE COURT: Redirect, Mr. Short?

EXHIBIT 11

IN THE IOWA DISTRICT COURT FOR LEE COUNTY (SOUTH)

STATE OF IOWA,

Plaintiff,

vs.

KELLI JO GRIFFIN,

Defendant.

Cause No. FECR 008508

TRANSCRIPT OF JURY TRIAL

03/19/2014 - 03/20/2014

The following is a transcript of the **JURY TRIAL** held in the above-entitled cause on **March 19-20, 2014,** before the **Hon. Mary Ann Brown,** Judge of the District Court, in the courtroom on the Second Floor of the South Lee County Courthouse, Keokuk, Iowa.

APPEARANCES:

MR. MICHAEL P. SHORT, Lee County Attorney, South Lee County Courthouse, Keokuk, Iowa, appearing on behalf of the State of Iowa.

MR. CURTIS DIAL, Attorney at Law, 401 Main Street, Keokuk, Iowa, appearing on behalf of the Defendant.

NANCY J. DERR, CSR

OFFICIAL SHORTHAND REPORTER

S A R A H R E I S E T T E R,

called as a witness by the State, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHORT:

Q. You're going to be asked to spell your first and last name.

A. Okay. My first name is Sarah, s-a-r-a-h; my last name is Reisetter, r-e-i-s-e-t-t-e-r.

THE COURT: Thank you.

Q. Sarah, tell us about your employment, are you employed and where?

A. I am employed. I'm the Director of Elections for the State of Iowa and I work in the Iowa Secretary of State's Office.

Q. How long have you worked for the Secretary of State?

A. I started there in March of 2008 and I've been the Director of Elections since July of 2008.

Q. Tell me about the Director of Elections, what's your job there?

A. What we generally do is we assist the County Auditors in their administration of elections. We provide guidance for the County Auditors and we provide guidance to members of the public, various attorneys. We maintain the

statewide voter registration system and support counties in the use of the statewide voter registration system --

THE COURT: I bet my court reporter is going to tell you to slow down.

THE WITNESS: Okay.

THE COURT: I know you just got here --

THE WITNESS: That's fine.

THE COURT: -- so you're probably rushed.

THE WITNESS: No, that's fine. I'll try to speak slower.

And then we act as the filing officer for state and federal offices.

Q. Which is why you were very happy when this got continued?

A. That's right, yes, because we've been busy.

Q. Because there was a statewide deadline?

A. Right, yes.

Q. One of the things you told us was that you do the statewide voter -- voter system?

A. That's correct.

Q. Tell me what -- what that is.

A. The 2002 Help America Vote Act required all states to have a single, centralized voter registration database and so beginning in 2006 our office started support of the State's single, unified voter registration database and so

we at the State level make sure the system, you know, stays running. We provide instructions for use of the system to the County Auditors; and then the County Auditors enter information about voter registrations, absentee ballots, that sort of thing, into the system.

Q. And so you told us it was created in response to the Help America Vote Act in 2002?

A. That's correct.

Q. Do you coordinate with any other agencies in terms of maintaining the accuracy of the voting records?

A. We receive data from other agencies that relates to voter registration, yes. We receive information from the Department of Public Health about regis -- or about individuals who die in the state of Iowa. We also receive information from county Clerks of Court about people who are convicted of felonies in the state. We receive information from the Governor's Office related to restoration of voting rights. We also receive information from U.S. Attorneys' Offices for individuals who have been convicted of felonies in federal court.

Q. And do County Auditors also input and give you information directly on that?

A. Yes, well, County Auditors enter information about registered voters directly into the system from their local offices, but that information is available to us at the

State the second it's -- it's put into the system.

Q. So I'm clear on this, Miss Reisetter, you don't input the data, you're not that person, but you are the person who supervises the people that do?

A. That's correct.

Q. How frequently is this list updated, your unified voter list?

A. Well, it's updated at the county level on a daily basis as they're putting voter registration information in. In terms of the information that we put in at the state level, we receive information from Department of Public Health on roughly a monthly basis. All 99 county Clerks of Court report to us, also, on a monthly basis; and then after we receive the paper reports from the county Clerks of Court, our staff enters the information into the system, and so it happens regularly.

Q. Your system, your unified statewide voter system, is required by federal law and by state law?

A. That's correct.

Q. Let me show you a couple documents. I'm going to show you first what I've marked as State's Exhibit Number 4 and ask if you can identify that, please.

A. This is a Voter Profile Report which is printed off of a voter registration record in the statewide voter registration system.

Charges, Dispositions, Sentences
Title: STATE, V HECKART, KELLI JO
Case: 08681 FECR060181 (MONROE)
Citation Number:

EXHIBIT 12

Defendant: SAYLOR, KELLI JO

Count 01

Charge

Charge:	124.401(1)(b)	**Description:**	CONTROLLED SUBSTANCE VIOL. (FELB)		
Offense Date:	01/17/2001	**Arrest Date:**		**Against Type:**	
DPS Number:					

Adjudication

Charge:	124.401(1)(b)	**Description:**	CONTROLLED SUBSTANCE VIOL. (FELB)
Adj.:	DNU-DISMISSED	**Adj.Date:**	02/27/2001
Adj.Judge:	WILSON, JUDGE DANIEL P.		
Comments:			

Sentence

Charge:	124.401(1)(b)	**Description:**	CONTROLLED SUBSTANCE VIOL. (FELB)		
Sentence Date:	02/27/2001	**Sentence:**	DISMISSED		
Appeal:		**Sen.Judge:**	WILSON, JUDGE DANIEL P.		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:		**Duration:**			
Comment:					

Count 02

Charge

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Offense Date:	01/17/2001	**Arrest Date:**		**Against Type:**	
DPS Number:					

Adjudication

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)
Adj.:	DNU-GUILTY	**Adj.Date:**	02/14/2001
Adj.Judge:	MEADOWS, JR, E RICHARD		
Comments:			

Sentence

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Sentence Date:	02/14/2001	**Sentence:**	PRISON		
Appeal:		**Sen.Judge:**	MEADOWS, JR, E RICHARD		
Facility Type:	P	**Attorney:**	Y		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:		**Duration:**	5 Year(s)		
Comment:					

Sentence

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Sentence Date:	02/14/2001	**Sentence:**	SUSPENDED PRISON		
Appeal:		**Sen.Judge:**	MEADOWS, JR, E RICHARD		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:		**Duration:**	5 Year(s)		
Comment:					

Sentence

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Sentence Date:	02/14/2001	**Sentence:**	PROBATION		
Appeal:		**Sen.Judge:**	MEADOWS, JR, E RICHARD		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N

Fine Amount:		**Duration:**	5 Year(s)		
Comment:					

Sentence

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Sentence Date:	02/14/2001	**Sentence:**	FINE		
Appeal:		**Sen.Judge:**	MEADOWS, JR, E RICHARD		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:	1000	**Duration:**			
Comment:					

Sentence

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Sentence Date:	02/14/2001	**Sentence:**	SUSPENDED FINE		
Appeal:		**Sen.Judge:**	MEADOWS, JR, E RICHARD		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:		**Duration:**			
Comment:					

Sentence

Charge:	124.401(4)(c)	**Description:**	POSSESSION OF ETHYL ETHER (FELD)		
Sentence Date:	08/08/2002	**Sentence:**	IMPOSED		
Appeal:		**Sen.Judge:**	MEADOWS, JR, E RICHARD		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:		**Duration:**			
Comment:					

Count 03

Charge

Charge:	908.11	**Description:**	VIOLATION OF PROBATION - 1985		
Offense Date:	06/25/2002	**Arrest Date:**		**Against Type:**	
DPS Number:					

Adjudication

Charge:	908.11	**Description:**	VIOLATION OF PROBATION - 1985
Adj.:	DNU-GUILTY	**Adj.Date:**	08/08/2002
Adj.Judge:	DAILY, KIRK A		
Comments:			

Sentence

Charge:	908.11	**Description:**	VIOLATION OF PROBATION - 1985		
Sentence Date:	08/08/2002	**Sentence:**	IMPOSED		
Appeal:		**Sen.Judge:**	DAILY, KIRK A		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	N
Fine Amount:		**Duration:**			
Comment:					

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Charges, Dispositions, Sentences
Title: ST VS SAYLOR, KELLI JO
Case: 08441 FECR005995 (HENRY)
Citation Number:

EXHIBIT 13

Defendant: SAYLOR, KELLI JO

Count 01

Charge

Charge: 124.401(1)(c) **Description:** CONTROLLED SUBSTANCE VIOL. (FELC)

Offense Date: 02/28/2007 **Arrest Date:** **Against Type:**

DPS Number: 0790847-01

Adjudication

Charge: 124.401(1)(c) **Description:** CONTROLLED SUBSTANCE VIOL. (FELC)

Adj.: GUILTY BY COURT **Adj.Date:** 01/07/2008

Adj.Judge: DANIELSON, CYNTHIA H

Comments:

Sentence

Charge: 124.401(1)(c) **Description:** CONTROLLED SUBSTANCE VIOL. (FELC)

Sentence Date: 01/07/2008 **Sentence:** PRISON

Appeal: **Sen.Judge:** DANIELSON, CYNTHIA H

Facility Type: **Attorney:** Y

Restitution: N **Drug:** Y **Extradition:** N

Lic.Revoked: Y **DDS:** N **Batterer:**

Fine Amount: **Duration:** 10 Year(s)

Comment:

Sentence

Charge: 124.401(1)(c) **Description:** CONTROLLED SUBSTANCE VIOL. (FELC)

Sentence Date: 01/07/2008 **Sentence:** SUSPENDED PRISON

Appeal: **Sen.Judge:** DANIELSON, CYNTHIA H

Facility **Attorney:** N

Type:					
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	
Fine Amount:		**Duration:**	10 Year(s)		
Comment:					

Sentence

Charge:	124.401(1)(c)	**Description:**	CONTROLLED SUBSTANCE VIOL. (FELC)		
Sentence Date:	01/07/2008	**Sentence:**	PROBATION		
Appeal:		**Sen.Judge:**	DANIELSON, CYNTHIA H		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	
Fine Amount:		**Duration:**	5 Year(s)		
Comment:					

Sentence

Charge:	124.401(1)(c)	**Description:**	CONTROLLED SUBSTANCE VIOL. (FELC)		
Sentence Date:	01/07/2008	**Sentence:**	FINE		
Appeal:		**Sen.Judge:**	DANIELSON, CYNTHIA H		
Facility Type:		**Attorney:**	N		
Restitution:	N	**Drug:**	N	**Extradition:**	N
Lic.Revoked:	N	**DDS:**	N	**Batterer:**	
Fine Amount:	1000	**Duration:**			
Comment:					

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APP 138

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Filings
Title: ST V GRIFFIN, KELLI JO
Case: 08561 FECR008508 (LEE)
Citation Number:

EXHIBIT 14

Event	Filed By	Filed	Create Date	Last Updated	Action Date
COURT REPORTER TRANSCRIPT		05/28/2014	05/29/2014	05/29/2014	
Comments: DERR					
EXHIBIT		03/20/2014	03/20/2014	03/20/2014	
Comments: STATES EXHIBITS 1 - 5 IN FILE					
ORDER OF DISPOSITION	BROWN MARY ANN	03/20/2014	03/20/2014	03/20/2014	
Comments: JUDGMENT OF ACQUITTAL					
COURT REPORTER MEMORANDUM AND CERTIFICATE		03/20/2014	03/20/2014	03/20/2014	
Comments: DERR SD DISK #12 FILES 098-099/100 RF #14-CR-15					
INSTRUCTIONS		03/20/2014	03/20/2014	03/20/2014	
JURY SELECTION		03/19/2014	03/20/2014	03/20/2014	
OTHER EVENT		03/14/2014	03/14/2014	03/14/2014	
Comments: EXPANDED MEDIA COORDINATOR'S NOTICE					
MOTION IN LIMINE	SHORT MICHAEL	03/14/2014	03/14/2014	03/14/2014	
NOTICE	DIAL CURTIS R	03/10/2014	03/10/2014	03/10/2014	
Comments: DEPOS					
OTHER ORDER	CLERK OF COURT - KEOKUK	03/07/2014	03/07/2014	03/07/2014	
Comments: ORDER WASN'T PUBLISHED SENDING ORDER 03/06/2014 2:36PM					
OTHER ORDER	BROWN MARY ANN	03/06/2014	03/07/2014	03/07/2014	
Comments: RULING ON DEFT'S MOTION IN LIMINE JT CONT TO 03/19/2014 9AM					
COURT REPORTER MEMORANDUM AND CERTIFICATE		03/06/2014	03/07/2014	03/07/2014	
Comments: DERR					

SD DISK #12 FILE 066

RF #14-CR-12

NOTICE OF INTRODUCTION OF WITNESS(S)	DIAL CURTIS R	03/06/2014	03/06/2014	03/06/2014
MOTION IN LIMINE	DIAL CURTIS R	03/04/2014	03/06/2014	03/06/2014
Comments: DEFENDANT'S THIRD MOTION IN LIMINE				
COURT REPORTER MEMORANDUM AND CERTIFICATE	BROWN MARY ANN	03/04/2014	03/05/2014	03/05/2014
Comments: NANCY DERR				
OTHER EVENT	SHORT MICHAEL	03/03/2014	03/03/2014	03/03/2014
Comments: RESPONSE TO DEFT'S 2ND MOTION IN LIMINE				
MOTION IN LIMINE	DIAL CURTIS R	02/28/2014	03/03/2014	03/03/2014
Comments: 2ND				
MOTION	DIAL CURTIS R	02/27/2014	02/27/2014	02/27/2014
Comments: TO EXCLUDE WITNESS AT TIME OF TRIAL				
MOTION IN LIMINE	DIAL CURTIS R	02/27/2014	02/27/2014	02/27/2014
NOTICE	DIAL CURTIS R	02/27/2014	02/27/2014	02/27/2014
Comments: DEPOS				
RETURN OF SERVICE ON SUBPOENA	DIAL CURTIS R	02/25/2014	02/27/2014	02/27/2014
Comments: SERVED-DENISE FRAISE				
NOTICE	DIAL CURTIS R	02/20/2014	02/20/2014	02/20/2014
Comments: DEPOS				
ADDITIONAL MINUTES OF TESTIMONY	SHORT MICHAEL	02/13/2014	02/13/2014	02/13/2014
RETURN OF SERVICE ON SUBPOENA	SHORT MICHAEL	02/07/2014	02/07/2014	02/07/2014
Comments: HARRIET JOHNSON 02/05/2014				
OTHER ORDER	BROWN MARY ANN	02/03/2014	02/04/2014	02/04/2014
Comments: CONFIRM FOR JT 03/04/2014				
COURT REPORTER MEMORANDUM AND CERTIFICATE		02/03/2014	02/04/2014	02/04/2014
Comments: DERR				

SD 12 FILE 023

RF #14-CR-07

OTHER ORDER	NONEMAN GARY R.	01/15/2014	01/17/2014	01/17/2014
Comments: DEFT MAY LEAVE THE STATE OF IOWA				
NOTICE	DIAL CURTIS R	01/14/2014	01/14/2014	01/14/2014
Comments: DEPOS				
ORDER FOR PRETRIAL CONFERENCE	BROWN MARY ANN	01/10/2014	01/13/2014	01/13/2014
Comments: PTC 02/03/2014 10;15AM				
JT 03/04/2014 9:00AM				
WRITTEN ARRAIGNMENT AND PLEA OF NOT GUILTY	DIAL CURTIS R	01/10/2014	01/10/2014	01/10/2014
Comments: DEMAND				
MINUTES OF TESTIMONY	SHORT MICHAEL	12/23/2013	12/26/2013	12/26/2013
ORDER FOR ARRAIGNMENT	BROWN MARY ANN	12/23/2013	12/26/2013	12/26/2013
Comments: 1/13/14 8:00				
TRIAL INFORMATION	SHORT MICHAEL	12/23/2013	12/26/2013	12/26/2013
HEARING FOR INITIAL APPEARANCE	NONEMAN GARY R.	12/18/2013	12/18/2013	12/18/2013
Comments: WAIVED PRELIM, CURT DIAL PRIVATELY RETAINED, REPORT TO				
CORRECTIONS FOR PTS, NO ALCOHOL/DRUGS, NO FIREARMS/DANGEROUS				
WEAPONS, ROR				
PROMISE TO APPEAR	LEE COUNTY SHERIFF OFFICE KEOK UK	12/16/2013	12/17/2013	12/17/2013
Comments: 12/1813 9AM				
OTHER EVENT	NONEMAN GARY R.	12/16/2013	12/16/2013	12/16/2013
Comments: ROR, CURT DIAL PRIVATELY RETAINED				
CRIMINAL COMPLAINT	LEE COUNTY SHERIFF OFFICE KEOK UK	12/16/2013	12/16/2013	12/16/2013

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EXHIBIT 15

IN THE IOWA DISTRICT COURT FOR LEE COUNTY (SOUTH)

STATE OF IOWA,

Plaintiff,

vs.

KELLI JO GRIFFIN,

Defendant.

Cause No. FECR 008508

TRANSCRIPT OF JURY TRIAL

03/19/2014 - 03/20/2014

The following is a transcript of the **JURY TRIAL** held in the above-entitled cause on **March 19-20, 2014,** before the **Hon. Mary Ann Brown,** Judge of the District Court, in the courtroom on the Second Floor of the South Lee County Courthouse, Keokuk, Iowa.

APPEARANCES:

MR. MICHAEL P. SHORT, Lee County Attorney, South Lee County Courthouse, Keokuk, Iowa, appearing on behalf of the State of Iowa.

MR. CURTIS DIAL, Attorney at Law, 401 Main Street, Keokuk, Iowa, appearing on behalf of the Defendant.

NANCY J. DERR, CSR
OFFICIAL SHORTHAND REPORTER

proving their case beyond a reasonable doubt, so Mr. Short will go first here.

Mr. Short, you may call your first witness.

MR. SHORT: Heather Jones, please.

(Witness sworn by the Court.)

THE COURT: And I think we know how to spell your name, but could you spell it for us, please?

THE WITNESS: Heather, h-e-a-t-h-e-r; Jones, j-o-n-e-s.

THE COURT: Thank you.

H E A T H E R J O N E S,

called as a witness by the State, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHORT:

Q. Heather, would you tell us your occupation, please?

A. I'm a probation/parole officer for the Eighth Judicial District.

Q. How long have you been so employed?

A. I've been employed with the Eighth District for about six years now.

Q. Where are your offices?

A. We have offices in Keokuk, Fort Madison, Burlington, Mount Pleasant.

Q. Which office do you primarily work out of?

Q. A person is not eligible for restoration until they have completed probation?

MR. DIAL: I'm going to object to this. If she doesn't know that, she wouldn't be able to answer it.

THE COURT: I think it's a different question than was asked of her before. If the witness knows the answer, she should answer; if she doesn't, she should say so.

A. We do not recommend restoration of citizenship at least until they have completed their probation.

MR. SHORT: I have no other questions. Thank you.

THE COURT: Cross-examination, Mr. Dial?

CROSS-EXAMINATION

BY MR. DIAL:

Q. Miss Jones, there were no probation violation complaints filed for Miss Griffin, were there?

A. No.

Q. When did she discharge probation?

A. She discharged January 7th of 2013.

Q. When is the last time you had contact with Kelli?

A. I last saw Kelli April 22nd -- Excuse me. I last saw Kelli December 4th of 2012.

Q. And she was not required to come back and see you after that?

A. No.

Q. So it was December of 2012?

County: Des Moines

Voter Profile Report

Date : 01/31/2014

Voter ID [redacted]

Alternate Names

Last Name	First Name	Middle Name	Suffix

Voting Histories

Date	Election Description	Election Participated
11/07/2006	General Election	VOTED
08/08/2006	Local Option Sales & Service Tax for Schools (SILO)	VOTED

Custom Information

Contact Information

Audit Log

User Name	Modified Date	Effective Date	Description	Old Value	New Value
tjohnson	01/28/2008	08/11/2005	Transaction Source	NCOA	In-Office / Registration Drive
tjohnson	02/27/2007	08/11/2005	Transaction Source	Administrative Action	NCOA
KELLY	01/27/2006	08/18/2005	Conversion Record		Merged -
KELLY	01/27/2006	08/18/2005	Conversion Record		
tjohnson	03/14/2008	03/14/2008	Correspondence Notice		Registration Cancellation Notification
tjohnson	01/28/2008	01/28/2008	Correspondence Notice		Voter Registration Card Requested
tjohnson	01/29/2008	01/29/2008	Correspondence Notice		Printed/Extracted.
tjohnson	03/14/2008	03/14/2008	Correspondence Notice		Printed/Extracted.
tjohnson	08/01/2006	07/31/2006	Correspondence Notice		Printed/Extracted.
tjohnson	07/31/2006	07/31/2006	Correspondence Notice		Voter Registration Card Requested
tjohnson	01/27/2006	01/27/2006	Correspondence Notice		Printed/Extracted.
tjohnson	01/27/2006	01/27/2006	Correspondence Notice		Voter Registration Card Requested
tjohnson	02/27/2007	08/11/2005	Residential Address	Std: [redacted] BURLINGTON, IA 52601	Std: [redacted] WEST
tjohnson	01/27/2006	08/11/2005	Residential Address	Std: [redacted] BURLINGTON, IA 52601	Std: [redacted]
dpatterson	08/23/2006	08/11/2005	Absentee Address		Election Specific
dpatterson	07/31/2006	08/11/2005	Absentee Address		Election Specific
tjohnson	01/28/2008	08/11/2005	Political Party	[redacted]	[redacted]
tjohnson	01/27/2006	08/11/2005	Political Party	[redacted]	[redacted]

EXHIBIT 16

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 MOTION FOR SUMMARY JUDGMENT

COMES NOW, Petitioner Kelli Jo Griffin, by and through her attorneys, and respectfully asks this Court to grant summary judgment pursuant to Iowa R. Civ. P. 1.981 in her favor, and states the following in support thereof:

1. Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 501 (Iowa 2013); *Varnum v. Brien*, 763 N.W.2d 862, 874 (Iowa 2009). The Court "resolve[s] a matter on summary judgment if the record reveals a conflict concerning only the legal consequences of undisputed facts."

Pecenka v. Fareway Stores, Inc., 672 N.W.2d 800, 802 (Iowa 2003). In deciding whether to grant summary judgment, the Court examines "the record in the light most favorable to the nonmoving party" and will "draw all legitimate inferences the evidence bears in order to establish the existence of questions of fact." *Ne. Cmty. Sch. Dist. v. Easton Valley Cmty. Sch. Dist.*, 857 N.W.2d 488, 492 (Iowa 2014).

2. The parties agree that the present case may be resolved on summary judgment because no issues of material fact exist, and they have stipulated to a joint statement of facts and appendix. Stipulated/Joint Statement of Undisputed Facts (filed May 15, 2015); Stipulated/Joint Appendix (filed May 15, 2015).

3. For the reasons set forth above, and incorporating all the arguments set forth in her concurrently filed Brief in Support of Motion for Summary Judgment, Petitioner is entitled to the relief she seeks as a matter of law as to both claims presented:

(1) Voting Rights Violation

The statutes, regulations, forms, and procedures which disqualify Mrs. Griffin from registering to vote and voting constitute a complete denial of her right to vote in violation of the Iowa Constitution because her prior felony conviction for delivery of less than 100 grams of cocaine, which sentence she has fully discharged, is not among the

category of felonies which qualify as "infamous crimes" under Article II, Section 5 of the Iowa Constitution; and

(2) Substantive Due Process Violation

The burden on Mrs. Griffin's fundamental right to vote in Iowa resulting from those statutes, regulations, forms, and procedures that bar her from voting without a grant by the Governor of a restoration of her right to vote, violate her right to substantive due process assured under Article I, Section 9 of the Iowa Constitution because they fail to meet the rigors of strict scrutiny analysis.

(Pet'r's Br. in Supp. of Mot. for Summ. J., June 8, 2015.)

WHEREFORE, the Petitioner, Kelli Jo Griffin, ask this Court to recognize and protect her constitutional rights to vote and due process by granting summary judgment in her favor.

Respectfully submitted,

/s/Rita Bettis
RITA BETTIS (AT0011558)
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Des Moines, IA 50309-2316
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jebenstein@aclu.org

ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 8th day of June 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

/s/Rita Bettis

Signature of person making service.

By deposit in the U.S. mail:

Michael P. Short
Lee County Attorney
25 North 7th St.,
PO Box 824
Keokuk, IA 52632

Attorney for Respondent Denise Fraise

By EDMS:

Jeffrey Thompson
Meghan Gavin
Iowa Attorney General's Office
1305 Walnut St.
Des Moines, IA 50319

Attorneys for Respondent Paul Pate

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 PETITIONER'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

I. STATEMENT OF THE CASE

The Petitioner, Kelli Jo Griffin, by and through her attorneys, seeks summary judgment granting declaratory judgment and supplemental relief as necessary to protect her right to vote and substantive due process. Mrs. Griffin has two claims, both of which may be resolved upon the determination of purely legal questions:

(1) **Voting Rights Violation**

The statutes, regulations, forms, and procedures which disqualify Mrs. Griffin from registering to vote and voting constitute a complete denial of her right to vote in violation of the Iowa Constitution because her prior felony conviction for delivery of less than 100 grams of cocaine, which sentence she has fully discharged, is not among the category of felonies which qualify as "infamous crimes" under Article II, Section 5 of the Iowa Constitution; and

(2) **Substantive Due Process Violation**

The burden on Mrs. Griffin's fundamental right to vote in Iowa resulting from those statutes, regulations, forms, and procedures that bar her from voting without a grant by the Governor of a restoration of her right to vote, violate her right to substantive due process assured under Article I, Section 9 of the Iowa Constitution because they fail to meet the rigors of strict scrutiny analysis.

II. STIPULATION BY THE PARTIES THAT THE CASE MAY BE RESOLVED ON SUMMARY JUDGMENT

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 501 (Iowa 2013); *Varnum v. Brien*, 763 N.W.2d 862, 874 (Iowa 2009). The Court resolves a matter on summary judgment if the record reveals a conflict concerning only "the legal consequences of undisputed facts." *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 802 (Iowa 2003) (citation omitted). In deciding whether to grant summary judgment, the Court examines "the record in the light most favorable to the nonmoving party" and will "draw all legitimate inferences the evidence bears in order to establish the existence of questions of fact." *Ne. Cmty. Sch. Dist. v. Easton Valley Cmty. Sch. Dist.*, 857 N.W.2d 488, 492 (Iowa 2014).

The parties agree that this case may be resolved on summary judgment because no issues of material fact exist, and they have stipulated to a joint statement of facts and appendix. (Stipulated/Joint Statement of Undisputed Facts, May 15, 2015); (Stipulated/J.A., May 15, 2015).

III. FACTS

The Petitioner, Mrs. Griffin, is a lifelong Iowan who resides in small town Montrose, Iowa, in Lee County, with her husband and four young children, including her stepdaughter. (App. Exs. 1, 9.) Mrs. Griffin has successfully rebuilt her life after a

period of recovery from substance abuse and addiction related to her experiences as a survivor of domestic violence in a past marriage. (App. Exs. 1, 9.) Mrs. Griffin is a homemaker and stay-at-home mother. (App. Exs. 1, 9.) In addition, she is active in her community, volunteers at a child abuse prevention center and a women's drug treatment center, and is a speaker to groups of women who, like her, are domestic violence and rape survivors. (App. Exs. 1, 9.)

Mrs. Griffin has discharged two felony convictions for substance abuse in her past. On February 14, 2001, Mrs. Griffin was convicted of possession of ethyl ether in violation of Iowa Code 124.401(4)(c), a Class D felony. (App. Exs. 1, 12.) She received a suspended prison sentence and was placed on probation, which she discharged on February 14, 2006. (App. Exs. 1, 12.) Upon discharge of her sentence, her voting rights were restored automatically through operation of former Governor Vilsack's Executive Order 42. (App. Ex. 1.) Executive Order 42 "utilized a process that granted the restoration of citizenship rights automatically." (App. Ex. 4; *see* App. Ex. 5.) As a result of Executive Order 42, there was an estimated 81 percent reduction in the number of people disenfranchised in Iowa when an estimated 100,000 Iowans regained the right to vote.[1] The automatic restoration process created by Executive Order 42 remained in effect until January 14, 2011. (App. Exs. 4, 5.) Between the

[1] Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010* (Oct. 2010), at 12, http://tinyurl.com/prlk28n.

discharge of her sentence in 2006 and the date of her conviction on January 7, 2008, Mrs. Griffin registered to vote and voted twice: both in an August 8, 2006 local election and the November 7, 2006 general election. (App. Ex. 16.)

On January 7, 2008, Mrs. Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, in violation of Iowa Code Section 124.401(1)(c)(2)(b), a Class C felony. (App. Exs. 3, 13.) She was given a suspended sentence and was placed on probation for 5 years. (App. Exs. 3, 13.) Mrs. Griffin successfully discharged her sentence on January 7, 2013. (App. Ex. 15.) At the time of her sentencing in 2008, Mrs. Griffin's defense attorney advised her that her right to vote would be restored automatically upon discharging her criminal sentence. (App. Exs. 1, 9.) That information was accurate at the time it was given in 2008, when Governor Vilsack's Executive Order 42 remained in effect.

On November 5, 2013, Mrs. Griffin registered and voted in an uncontested municipal election held in Montrose, Iowa. (App. Exs. 1, 9.) Mrs. Griffin brought her children to the polling site with her in order to teach them about voting. (App. Exs. 1, 9.) Her daughter had recently learned about voting in school and Mrs. Griffin wanted to show her children how the process worked. (App. Exs. 1, 9.)

Unknown to Mrs. Griffin, when Governor Branstad began his current term in 2011, his second executive order, Executive Order 70, revoked former Governor Vilsack's Executive Order 42. (App. Exs. 4, 5.) Thereby, Executive Order 70 ended

the system of automatic restoration of voting rights for people who completed their criminal sentences. (App. Exs. 4, 5.)

In so doing, Executive Order 70 made Iowa one of three most restrictive states for voting in the country for people with criminal records. Only in Iowa, Kentucky, and Florida are all people with a felony conviction permanently disenfranchised.[2] Executive Order 70 has had a profound impact on civil and political rights in our state.[3] In Iowa currently, only a handful of the thousands of people who have completed their criminal sentences have successfully completed Governor Branstad's application process for an executive commutation restoring their rights of citizenship. *See* Ryan J. Foley, "Iowa Governor Restores More Felons' Voting Rights," *Washington Times*, Jan. 14, 2014, http://tinyurl.com/ob2qkkn (From 2011 to 2013, an estimated 25,000 Iowans completed their sentences, but only 40 regained their voting rights.). The application process is burdensome. It requires the applicant to complete a multi-

[2] *See* National Conference of State Legislatures, "Felon Voting Rights" (July 15, 2014), http://tinyurl.com/p3nrrun. Virginia initiated automatic restoration in 2014. *See* The Brennan Center, Criminal Disenfranchisement Laws Across the United States, http://tinyurl.com/lp48fru.

[3] Prior to the July 4, 2005 Executive Order 42 signed by then-Governor Vilsack, 1 in 4 (24.87 percent) of voting-age African-American citizens in Iowa were disenfranchised. Lynn Eisenberg, *Note: States as Laboratories for Federal Reform: Case Studies in Felon Disenfranchisement Law*, 15 N.Y.U. J. Legis. & Pub. Pol'y 539, 563-64 (2012); The Sentencing Project, *Iowa and Felony Disenfranchisement* (2005), at 2, http://tinyurl.com/qy9x2z6. Under Executive Order 42, rescinded by the Defendant, there was an 81 percent reduction in the number of people disenfranchised in Iowa and an estimated 100,000 Iowans regained the right to vote. *See* Porter, *Expanding the Vote*, at 12, http://tinyurl.com/prlk28n.

step paperwork process, demonstrate that he or she has fully paid or is current on any payments for court-imposed fines, fees and restitution, as well as obtain and provide a copy of their Iowa Criminal History Record from the Iowa Division of Criminal Investigation, which costs $15.00 per request. (App. Exs. 6-8.)

Following the decision in *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014), the Iowa Governor's Office is no longer requiring persons convicted of aggravated misdemeanors to apply to have their right to vote restored, but still requires persons convicted of *all* felonies to do so. (App. Ex. 8) ("Any person convicted of a felony is barred from voting or holding office. In order to vote or hold public office, a person convicted of a felony must apply to the Office of the Governor for restoration of citizenship rights – right to vote and hold public office and have the Governor grant a restoration.").

After the 2013 municipal election in Montrose, Auditor Fraise identified Mrs. Griffin's ballot and, after running her information through the voter registration program at the Lee County Auditor's Office, determined that Mrs. Griffin was ineligible to vote because of her prior felony conviction. (App. Ex. 10.) On December 16, 2013, the State charged Mrs. Griffin with Perjury, a class D felony, for registering to vote and voting in the November 5, 2013 election, in violation of Iowa Code Section 720.2. (App. Exs. 1, 14.) Mrs. Griffin pled not guilty. (App. Exs. 1, 14.)

On March 19-20, 2014, Mrs. Griffin was tried by a Lee County jury, which acquitted her of all charges. (App. Exs. 1, 14.)

Now, Mrs. Griffin would like to fully engage in the civic life of her community where she lives, volunteers, and raises her family by voting without fear of criminal prosecution. (App. Ex. 1.) Voting is important to her, and she views voting as a vital part of being a productive member of her community. (App. Ex. 1.) But for her 2008 felony conviction, Mrs. Griffin satisfies the requirements to register to vote under Iowa's existing statutes and regulations. (App. Ex. 1.) Mrs. Griffin has not applied for a restoration of her right to vote by the Governor of Iowa subsequent to her 2008 felony conviction, nor otherwise had her right to vote restored automatically by the Governor of Iowa following the discharge of her sentence in 2013, by which time Executive Order 70 was in effect. (App. Exs. 1, 2.) Mrs. Griffin now wishes to register to vote and vote in elections that impact her, her family, and her community without fear of subsequent criminal prosecution. (App. Ex. 1.)

IV. ARGUMENT

1. The Iowa Constitution Does Not Disqualify All Iowans With a Felony Conviction, But Only Those Convicted of an "Infamous Crime"

The Iowa Constitution assures the right of suffrage to every citizen of the United States who is 21 years of age[4] and an Iowa resident according to the terms laid out by law. Iowa Const. art. II, § 1. In the recent case *Chiodo v. Section 43.24 Panel*, 846

[4] The Twenty-Sixth Amendment to the U.S. Constitution extends the right to vote to those age eighteen or older. U.S. Const. amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.").

N.W.2d 845 (Iowa 2014), Chief Justice Cady, writing for the plurality, summarized the jurisprudence in Iowa governing the right of citizens to vote:

> Voting is a fundamental right in Iowa, indeed the nation. *See Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live. *See Wesberry v. Sanders*, [376 U.S. 1, 17 (1964)]. The right to vote is found at the heart of representative government and is "preservative of other basic civil and political rights." *Reynolds v. Sims*, [377 U.S. 533, 562 (1964)]; *accord Yick Wo v. Hopkins*, [118 U.S. 356, 370 (1866)].

Chiodo, 846 N.W.2d at 848 (Cady, C. J., for the plurality).

While the Iowa Constitution broadly guarantees the right to vote, it also expressly disqualifies as electors two classes of persons: those adjudged mentally incompetent to vote and those "convicted of any infamous crime." Iowa Const. art. II, § 5. The Iowa Supreme Court's plurality decision in *Chiodo*, however, makes clear that the disqualification for a conviction of an "infamous crime" does not apply to all felony offenders. *Chiodo*, 846 N.W.2d at 853.

In *Chiodo*, the Court was asked to decide whether a candidate for a state Senate district was disqualified from running for office on account of his conviction of second offense operating while intoxicated (OWI), an aggravated misdemeanor. *Chiodo*, 846 N.W.2d at 847. The Court, for the first time, engaged in a historical and "textual analysis of the meaning of 'infamous crime' in article II, section 5." *Chiodo*, 846 N.W.2d at 851. Five justices in *Chiodo* agreed that the nature of the crime itself, rather than the length of a possible sentence, determines whether a crime is infamous,

holding that aggravated misdemeanors, which are punishable by a maximum two years' imprisonment in the penitentiary, are not infamous crimes that disqualify a person from voting and holding office. *Id.* at 857 (Cady, C. J., for the plurality), 863 (Mansfield, J., for the special concurrence). One justice dissented, and another took no part in the decision. *Id.* at 857. A four-justice majority (the plurality and the dissent, authored by Justice Wiggins), agreed that, because "[t]he legislature may not add to or subtract from the voter qualifications under the constitution," *Chiodo*, 846 N.W.2d at 852, the legislature lacks constitutional authority to define "infamous crime" as used in Article II, Section 5, *see id.* at 855 (Cady, C.J., for the plurality); *see also id.* at 864 (Wiggins, J., dissenting) ("I agree with the plurality that . . . . [t]he legislature cannot disqualify a voter by defining 'infamous crime' under our constitutional scheme because the constitution defines who is and who is not an eligible elector."). The meaning of "infamous crime," therefore, must be derived from the Iowa Constitution itself.

Three justices comprising the plurality determined that the term "infamous crime" was distinct in meaning from the term "felony," and that not all felonies are infamous crimes. *Chiodo*, 846 N.W.2d at 853 ("A review of article II of our constitution reveals the framers clearly understood that an 'infamous crime' and a 'felony' had different meanings.") The text, placement, and legislative history of the Infamous Crimes Clause suggest that Iowa's constitutional founders intended it not as a form of punishment, but as a regulatory measure to ensure the integrity of the

electoral process. *Id.* at 855 ("The overall approach reveals our framers not only understood the importance for Iowans to have a voice in our democracy through voting, but they further understood the fundamental need to preserve the integrity of the process by making sure it was not compromised by voices that were incompetent to meaningfully participate or voices infected by an infamous disposition.")

Therefore, there are two distinct categories of felonies as relating to the right to vote under the Iowa Constitution. There is one category consisting of those felonies that are infamous crimes serving to disqualify a voter, and there is a second category of all the remaining felonies, which are not infamous crimes and therefore do not disqualify a voter. While the plurality did not go so far as to establish what precise test would be used to determine which felonies belonged in each category, it did outline three elements of a "nascent" test to determine which crimes belong to the category of "infamous crimes," and by their exclusion, which crimes do not. *Chiodo*, 846 N.W.2d at 856. That nascent test requires that in order to be categorized as an infamous crime, an offense must meet three criteria:

(1) The offense must be "particularly serious," which the plurality and special concurrence agreed excludes any crime classified as a misdemeanor, *id.* at 856;

(2) The nature of the offense "reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections," *id.*, meaning that the crime must have an actual "nexus to preserving the integrity of the election process," *id.* at 857;

(3) Finally, the plurality suggested that the crime must involve an element of "specific criminal intent," *id.* at 856.[5]

All three requirements of an infamous crime must be met in order to deprive a person of their right as an elector. *See Chiodo*, 846 N.W.2d at 856 ("We only conclude that the crime must be classified as particularly serious, *and* it must be a crime that reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections. We can decide this case by using the first part of this nascent definition.") (emphasis added).

The plurality left for another day the task of articulating a more precise test to determine which felonies are properly categorized as infamous crimes under the Iowa Constitution, and specifically declined to decide whether the statutory definition of "infamous crime" under Iowa Code Section 39.3(8)—which includes all state and federal felonies—is unconstitutional. *Chiodo*, 846 N.W.2d at 856-57 ("It will be prudent for us to develop a more precise test that distinguishes between felony crimes and infamous crimes within the regulatory purpose of article II, section 5 when the facts of the case provide us with the ability and perspective to better understand the needed contours of the test.") Nevertheless, the plurality outlined three possible

[5] Although the test put forward by the *Chiodo* plurality is most simply articulated in three parts, it could be argued that the plurality intended the third element, requiring specific criminal intent, as a subcategory of the first requirement that the crime be particularly serious or the second requirement that the crime have a nexus to voting and elections. The analysis found in this petition applies equally to either formulation of the test.

standards that have been employed by courts in other states to determine which felonies belong to the category of infamous crimes, without deciding which of these three best satisfies the nascent test for infamous crime:

(1) Crimes that are an affront to democratic governance. First, the *Chiodo* plurality observed that "[s]ome courts have settled on a standard that defines an 'infamous crime' as an 'affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections.'" *Chiodo*, 846 N.W.2d at 856 (quoting *Snyder v. King*, 958 N.E.2d 764, 782 (Ind. 2011)). This standard includes only those offenses indicating that the offender is likely to subvert the voting process, such as elections fraud, bribery, and perjury.

(2) *Crimen falsi.* Second, the plurality observed that other state courts limit the definition of "infamous crime" to "a *crimen falsi* offense, or a like offense involving the charge of falsehood that affects the public administration of justice." *Chiodo*, 846 N.W.2d at 856 (quoting *Commonwealth ex rel. Baldwin v. Richard*, 751 A.2d 647, 653 (Pa. 2000)). This standard is broader than the first, encompassing all offenses that bear upon a person's honesty, which includes those described above in category (1), as well as other honesty-related offenses such as forgery, embezzlement, and criminal fraud.

(3) Crimes of moral turpitude. Third, the plurality noted that other state courts establish the standard for infamy as crimes marked by "great moral turpitude." *Chiodo*, 846 N.W.2d at 856 (quoting *Washington v. State*, 75 Ala. 582, 585 (1884)). This standard is the broadest of the three described by the plurality, and encompasses all offenses that could be described as "vile; base; [or] detestable," *Chiodo*, 846 N.W.2d at 854 (quoting *Snyder*, 958 N.E.2d at 780), such as all of the offenses in categories (1) and (2) above, and, in some states, include other particularly heinous offenses such as arson, rape, and murder.

Petitioner's case requires this Court both: (a) to decide which judicial approach to take in categorizing felonies as "infamous" or non-infamous; and (b) to determine if the Petitioner's crime belongs to that category of felonies that are infamous or, instead, if it belongs to the larger category of felonies which are not infamous.

2. Mrs. Griffin's Offense is Not an "Infamous Crime" Under Any Application of The Nascent Test in *Chiodo*

As explained in Section 3 below, the definition of "infamous crime" that best reflects the history of the laws of Iowa as well as the regulatory purpose of Article II to "preserve the integrity of the process of voting," *Chiodo*, 846 N.W.2d at 855, is a crime involving an "affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections," *id.* at 856 (quoting *Snyder,* 958 N.E.2d at 782). As shown below, Mrs. Griffin's offense of delivery of less than 100 grams of cocaine clearly does not qualify as infamous under that standard.

However, the remaining two standards identified by the *Chiodo* plurality—defining infamous crimes as *crimen falsi* or, alternatively, as crimes of moral turpitude—are also discussed below, so that the Court has the information necessary to use any of the standards identified by the Iowa Supreme Court to define Iowa's infamous crimes clause in Article II, Section 5. Ultimately, like OWI (second offense), drug delivery lacks any of the hallmarks of an infamous crime that disqualifies a person from voting under the three prongs of the nascent test: it is not a "particularly serious" offense as understood in the context of Article II's purpose in regulating elections; it does not have a "nexus to preserving the integrity of the election process;" and it does not involve an element of "specific criminal intent."

Thus, Mrs. Griffin's offense cannot be understood as an infamous crime under any of the *Chiodo* plurality's three possible standards.

A. Mrs. Griffin's Offense is Not an Infamous Crime Under Standard 1 (Crimes That Are an Affront to Democratic Governance).

As the *Chiodo* plurality observed, one possible standard for understanding the term "infamous crime" defines it as encompassing only those offenses that bear directly on a person's ability to participate in elections without subverting the integrity of the democratic process: that is, offenses that attempt to abuse or undermine our constitutional government. This approach—which would clearly not include Mrs. Griffin's offense—is illustrated most clearly by the Indiana Supreme Court's decision in *Snyder v. King*, 958 N.E.2d 764 (Ind. 2011), which was cited as persuasive by the *Chiodo* plurality. *See Chiodo*, 846 N.W.2d at 854-56.

In *Snyder*, the Indiana Supreme Court interpreted its own state constitution, adopted in 1851, just six years before Iowa's 1857 Constitution was ratified. *See Chiodo*, 846 N.W.2d at 854-55. The Indiana Constitution reads in relevant part: "The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime." Ind. Const. Art. II, § 8; *Snyder*, 958 N.W.2d at 774-75. The Indiana Supreme Court, in a meticulous opinion tracing the definition of infamous crime back to its ancient Greek and Roman origins through the Indiana penal code in 1816, found that the Indiana Constitution's infamous crimes provision was a regulatory measure seeking to regulate suffrage and elections

so as to preserve the integrity of elections and the democratic system. *Snyder*, 958 N.W.2d at 781 ("In other words, criminal disenfranchisement protects 'the purity of the ballot box.'"). The Court then described the definition of an infamous offense narrowly as follows:

> We hold that an infamous crime is one involving an affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections. . . . Prototypical examples of infamous crimes are treason, perjury, malicious prosecution, and election fraud . . . . Although most of these examples involve elements of deceit and dishonesty, . . . the critical element is that they attempt to abuse or undermine our constitutional government.

Snyder, 958 N.E.2d at 782 (internal citation omitted); *see also Otsuka v. Hite*, 414 P.2d 412, 422 (Cal. 1966) ("[T]he inquiry must focus more precisely on the nature of the crime itself, and determine whether the elements of the crime are such that he who has committed it may reasonably be deemed to constitute a threat to the integrity of the elective process.").

Under this standard, Mrs. Griffin's offense of drug delivery is not infamous. The nature of the offense does not "reveal[] that voters who commit the crime would tend to undermine the process of democratic governance through elections," and has no "nexus to preserving the integrity of the election process," as required by the plurality opinion in *Chiodo*. 846 N.W.2d at 856-57. While Mrs. Griffin's delivery conviction is classified as a felony, that statutory designation is not dispositive. Rather, the critical factor is that the crime does not directly "attempt to abuse or undermine

our constitutional government." *Snyder*, 958 N.E.2d at 782. There simply is no nexus between delivery of a controlled substance and voting, the electoral process, or democratic governance more generally.

B. Mrs. Griffin's Offense is Not Infamous Under Standard 2 (*Crimen Falsi*).

The second possible standard identified by the *Chiodo* plurality defines "infamous crime" as a *crimen falsi*—a crime involving deceitfulness or falsehood. *Chiodo*, 846 N.W.2d at 856. This standard—which similarly excludes Mrs. Griffin's offense—focuses on the element of the crime consisting of a specific intent to deceive, and would include the public integrity-related offenses described above, as well as other offenses that more generally bear upon a person's honesty, such as forgery, embezzlement, or criminal fraud.

Several states, such as Pennsylvania and Arkansas employ this standard. *See, e.g.*, *Commonwealth ex rel. Baldwin v. Richard*, 751 A.2d 647, 651-52 (Pa. 2000) (observing that, in 1842, the Pennsylvania Supreme Court had explained what types of offenses were infamous as "treason, felony, and every species of the *crimen falsi*—such as forgery, subornation of perjury, attaint of false verdict, and other offenses of the like description, which involve the charge of falsehood, and affect the public administration of justice"); *see also Commonwealth ex rel. Kearney v. Rambler*, 32 A.3d 658, 663-64 (Pa. 2011); *State v. Oldner*, 206 S.W.3d 818, 822 (Ark. 2005) (finding that any

crime involving deceitfulness, untruthfulness, or falsification—including all honesty-related offenses such as theft or forgery—is an infamous crime in Arkansas).

Iowa courts have explained that "[t]he term '*crimen falsi*' 'generally refers to crimes in the nature of perjury or subornation of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense which involves some element of deceitfulness, untruthfulness, or falsification bearing on witness' propensity to testify truthfully.'" *State v. O'Neal*, 822 N.W.2d 745 (Iowa Ct. App. 2012) (quoting Black's Law Dictionary 335 (5th ed. 1979)); *see also State v. Harrington*, 800 N.W.2d 46, 51 n.4 (Iowa 2011).

As explained in Section 3 below, this Court should not adopt the *crimen falsi* standard. But even if it were to do so, a nonviolent drug crime, such as Mrs. Griffin's, clearly does not constitute a *crimen falsi*, because it does not include an element of deceit. *See State v. Dudley*, 856 N.W.2d 668, 681 (Iowa 2014), (citing *State v. Parker*, 747 N.W.2d 196, 208 (Iowa 2008) (distinguishing a previous conviction of drug possession from convictions "found to be probative of credibility, like perjury and theft offenses")). As the *Chiodo* plurality explained, one required element of an infamous offense is that it must have a "specific criminal intent." *Chiodo*, 846 N.W.2d at 857. Unlike a *crimen falsi*, which involves the intent to deceive, Mrs. Griffin's offense is not a specific intent crime. Delivery of 100 grams or less of cocaine, in

violation of Iowa Code Section 124.401(1)(c)(2)(b), is a general intent crime[6] that does not require the state to prove any intent beyond the delivery itself.[7]

Mrs. Griffin pled guilty to delivery of a controlled substance, a general intent crime. (App. Ex. 3.) The offense is not a *crimen falsi* because it includes no element of intent to deceive. Indeed, it includes no specific intent whatsoever and therefore cannot meet the third requirement under the *Chiodo* plurality's nascent test for infamous crime.

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[6] The Iowa Supreme Court has articulated the distinction between general and specific criminal intent as follows:

> When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a further consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general criminal intent. When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent.

Eggman v. Scurr, 311 N.W.2d 77, 79 (Iowa 1981). The Court continued by saying that "offenses which have no express intent elements may be characterized as general intent crimes." *Id.* at 79 (citation omitted).

[7] Iowa Code Section 124.401(1) creates a crime for three categories of behavior: (1) manufacturing a controlled substance; (2) delivering a controlled substance; and (3) possessing a controlled substance with intent to manufacture or deliver a controlled substance. Iowa Code § 124.401(1) ("[I]t is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance.") The third category, possession with intent to deliver or manufacture, is a specific intent crime because in order to convict a defendant, the State must prove not only that the defendant possessed the controlled substance, but also that he intended to deliver or manufacture it. However, the first two categories, delivery and manufacturing, are general intent crimes, because they only require the State to prove that there was delivery or manufacturing of a controlled substance, and the defendant's intentions about what would happen after are of no consequence.

C. Mrs. Griffin's Offense is Not Infamous Under Standard 3 (Crimes of Moral Turpitude).

The *Chiodo* plurality identified a third standard for defining infamous crimes that has been adopted by other state courts, which treats crimes marked by "great moral turpitude" as infamous. *Chiodo*, 846 N.W.2d at 856 (quoting *Washington*, 75 Ala. at 585). Moral turpitude is a legal concept that attempts to describe "conduct that is inherently base, vile, or depraved, and contrary to the private and social duties man owes to his fellow men or to society in general." *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1068 (9th Cir. 2007); *see also Chiodo*, 846 N.W.2d at 854 (acknowledging that one definition of infamy could encompass those offenses that are "'most vile; base; detestable'") (quoting *Snyder*, 958 N.E.2d at 780).

The Iowa Supreme Court has cited as the "best general definition of the term 'moral turpitude' " conduct that "imports an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow." *Comm. on Prof'l Ethics and Conduct of the Iowa State Bar Ass'n v. Patterson*, 369 N.W.2d 798, 801 (Iowa 1985) (citation omitted) (determining that a two-hour assault on an unresisting victim involves "moral turpitude," leading to suspension of the perpetrator's license to practice law). In the twentieth and twenty-first centuries in Iowa, the term has "never been clearly defined because of the nature of the term," *Patterson*, 369 N.W.2d at 801, but has been understood, in contexts such as attorney

misconduct proceedings, to include both crimes of violence and crimes involving fraudulent or dishonest intent. *See, e.g., Sup. Ct. Bd. Prof'l Ethics & Conduct v. Ruth*, 636 N.W.2d 86 (Iowa 2001) (domestic abuse); *Patterson*, 369 N.W.2d 798 (Iowa 1985) (assault); *Comm. on Prof'l Ethics & Conduct v. Lindaman*, 449 N.W.2d 341 (Iowa 1989) (lascivious acts with a child); *Sup. Ct. Att'y Disciplinary Bd. v. Carroll*, 721 N.W.2d 788 (Iowa 2006) (misappropriating money from a non-profit organization); *Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Romeo*, 554 N.W.2d 552 (Iowa 1996) (falsifying written record of transaction in order to protect client); *Comm. on Prof'l Ethics & Conduct v. Pappas*, 313 N.W.2d 532 (Iowa 1981) (first degree theft); *Comm. on Prof'l Ethics & Conduct v. Bromwell*, 221 N.W.2d 777 (Iowa 1974) (failure to file income tax returns).

The moral turpitude standard for defining infamous crime could be understood as broadly consistent with a statute adopted by the 1839 territorial legislature. *See Chiodo*, 846 N.W.2d at 854-55. As the *Chiodo* plurality observed, however, the territorial legislation is not dispositive because it "preceded our constitutional convention by nearly a generation," and is merely a statute and "not a constitutional test." *Id.* Nevertheless, it offers "a limited window into some specific understanding of the meaning of 'infamous crime[s],' " and provided that

> Each and every person in this Territory who may hereafter be convicted of the crime of rape, kidnapping, wilful [sic] and corrupt perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, of serving as a juror, and of giving testimony in this Territory.

Id. at 854 (quoting The Statute Laws of the Territory of Iowa, Code of Criminal Jurisprudence, Tenth Div., § 109, at 182 (1839)).

For reasons stated in Section 3 below, this Court should not adopt the moral turpitude standard to define infamy. But even if it were to do so, such a definition of infamous crimes could not include Mrs. Griffin's offense. Her crime, delivery of less than 100 grams of cocaine, is neither "particularly serious" as required under the nascent test, *Chiodo,* 846 N.W.2d at 856-57, nor dispositive of an infamous character, to warrant the loss of the fundamental right to vote under Article II, Section 5 of the Iowa Constitution. Drug delivery is not among those "particularly serious" offenses that were considered heinous under the 1839 code in Iowa, such as rape, kidnapping, and arson.

Delivery, like most drug crimes, is often driven by various factors including addiction, poverty, and mental health issues. As a disease, substance addiction is a facet of an individual's health—for which our founders had no concept—not indicative or dispositive of a vile, base, or detestable character. The mass criminalization of drug usage and incarceration of those convicted of drug related offenses are relatively recent phenomena without root in our common law; there is no long tradition of treating drug usage and addiction as crimes dating back to our state's founding. Only in the last 40 years during the so-called War on Drugs have such tremendous resources have been expended to arrest, convict, and incarcerate people

for substance abuse and related behaviors. *See* Heather Schoenfeld, *The War on Drugs, the Politics of Crime, and Mass Incarceration in the United States*, 15 J. Gender Race & Just. 315 (2012); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 Stan. L. Rev. 1271 (2004); *see also* Mark W. Bennett and Mark Osler, "America's mass incarceration: The hidden costs," *Minneapolis Star Tribune*, June 27, 2013, http://tinyurl.com/nvrevxx.

Like the crime of operating a vehicle while intoxicated, delivery of cocaine has no analogue in the crimes understood as particularly heinous by our founders or others who came before them. The requirement that a crime be particularly heinous speaks to the wide understanding of the offender's character as untrustworthy, vile, or detestable in the community. Neither our historical nor contemporary treatment of persons who are recovered from a history of substance dependency supports application of the loss of voting rights to this category of crimes.

3. This Court Should Adopt The "Affront To Democratic Governance" Standard For Defining "Infamous Crime"

As explained above, none of the possible standards for defining infamy set forth by the *Chiodo* plurality would include delivery of less than 100 grams of cocaine, and this Court should therefore hold that Mrs. Griffin's offense is not an infamous crime. In so ruling, this Court should adopt the "affront to democratic governance" standard, which is the standard that is most consistent with the text and history of the Iowa Supreme Court. It is also the only standard that is consistent with the nascent

test the plurality adopted in *Chiodo*, 846 N.W.2d at 856-57 (infamous crimes are particularly serious, "reveal[] that voters who commit the crime would tend to undermine the process of democratic governance through elections," have an actual "nexus to preserving the integrity of the election process," and involve an element of "specific criminal intent").

A. The "Affront to Democratic Governance" Standard Best Comports With The Text and History of The Iowa Constitution

The *Chiodo* plurality indicated that the "affront to democratic governance" approach would be most consistent with Iowa's constitutional jurisprudence and history. *See Chiodo*, 846 N.W.2d at 855. As the plurality explained, Article II, Section 5 of the Iowa Constitution was designed as a regulatory measure to protect the sanctity of the democratic process, not as an additional punishment for the commission of an offense. *Chiodo*, 846 N.W.2d at 855 ("As recognized by other courts, infamous crimes clauses found in many state constitutional voting provisions are properly understood as a regulatory measure, not a punitive measure. Article II of the Iowa Constitution appears compatible with this approach.") (internal citation omitted). "Within this context and setting, the concept of disenfranchisement was not meant to punish certain criminal offenders or persons adjudged incompetent, but to protect 'the purity of the ballot box.'" *Chiodo*, 846 N.W.2d at 855-56 (internal citation omitted).

> Thus, disenfranchisement of infamous criminals parallels disenfranchisement of incompetent persons under article II, section 5.

> The infamous crimes clause incapacitates infamous criminals who would otherwise threaten to subvert the voting process and diminish the voices of those casting legitimate ballots. As a result, the regulatory focus of disenfranchisement under article II reveals the meaning of an "infamous crime" under article II, section 5 looks not only to the classification of the crime itself, but how a voter's conviction of that crime might compromise the integrity of our process of democratic governance through the ballot box.

Chiodo, 846 N.W.2d at 856.

A review of which crimes were classified as infamous in the days prior to Iowa's statehood supports this interpretation of our Infamous Crimes Clause. *See Chiodo*, 846 N.W.2d at 851. For example, the Organic Act for the Territory of Iowa (1838) extended all the same laws, rights, privileges, and immunities as granted to Wisconsin and its inhabitants to Iowa. Act of June 12, 1835, 5 Stats., 235. Chap. XCVI (Sec. 12), at 71, http://tinyurl.com/ncpfoxr. Legislation passed at the first assembly of the Territory of Wisconsin (1836)[8]—which included part of the territory that became the state of Iowa—includes the phrase "infamous crime" three times. In all instances, infamous crime is used to indicate unreliability to conduct duties related to democratic governance: to practice law and hold office as justice of the peace, serve

[8] The Organic Act for the Territory of Wisconsin (1836) did not exclude persons convicted of certain crimes from right to vote or run for office, but vested the legislature of the Territory of Wisconsin with the power to define the qualifications of voters for all elections after the first election. Territory of Wisconsin Acts of April 20, 1836 and June 12, 1838; 5 Stats., 10, 235. Chap. LIV–An Act establishing the Territorial Government of Wisconsin, at 57, http://tinyurl.com/nacpso4 (republished pursuant to Act of the Legislature of 1967)("the qualifications of voters at all subsequent elections shall be such as shall be determined by the Legislative Assembly").

as a juror, or serve as a witness. Territory of Wisconsin Acts of April 20, 1836 and June 12, 1838; 5 Stats., 10, 235. Chap. LIV, at 57, http://tinyurl.com/nacpso4. The words "infamous crime" are also used as distinct from either "felony" or "misdemeanor." *Id.* The Wisconsin Territorial Acts provided for the striking of attorneys admitted to practice law on account of "any misdemeanor or infamous crime." Acts No. 24, § 1, pp. 80-81, http://tinyurl.com/pu5puxb. Second, the Acts provide for the removal of justices of the peace for conviction of "bribery, perjury or any other infamous crime, or convicted of any willful misdemeanor in office." Acts No. 58, § 17, pp. 311-12, http://tinyurl.com/qj8qaar. Last, the Acts provided that persons convicted of infamous crimes be disqualified from serving on a jury, along with other persons whose presence on a jury would constitute a conflict, whose presence would necessarily be required elsewhere, who possessed mental or physical infirmity, or whose reliability might reasonably be questioned. Acts No. 73, § 1, pp. 432-33, http://tinyurl.com/p862ug7. The ability to serve on a jury, in turn, was tied directly to the status of being a qualified elector. *Id.* ("[A]ll person who are qualified electors in this territory, shall be liable to serve as jurors in their respective counties as hereinafter provided . . . [Exceptions] . . . and all persons shall be disqualified from serving as jurors who have been convicted of any infamous crime.").

Similarly, the 1851 Code of Iowa[9]—which was the first law the state adopted after ratifying the 1846 Constitution, and was still the law of the land when the 1857 Constitution was passed—conceived of infamous crimes in relation to the integrity of democratic governance. In at least three places, the legislature went out of its way to state that crimes already punishable by a year or more of imprisonment in the penitentiary *further* disqualified the individual from holding public office in the future. Chapter 140, § 2618 stated that officers convicted of embezzling public money "shall be imprisoned in the penitentiary not exceeding five years and fined in a sum equal to the amount of money embezzled, *and moreover he is forever afterward disqualified from holding any office* under the laws or constitution of this state." Iowa Code Ch. 140 § 2618 (1851) (emphasis added). Likewise, Chapter 142, "Offenses Against Public Justice," created crimes for "Bribery of public officers" (Iowa Code Ch. 142 § 2647 (1851)) and "Acceptance of bribes, etc., by such officers" (Iowa Code Ch. 142 § 2648 (1851)) that were punishable by terms of imprisonment of 5 and 10 years, respectively.

Transcripts of the 1857 Constitutional Convention Debates[10] show that every time Article II, Section 5 was brought before the floor, it was adopted without discussion. But while the meaning of the term "infamous crime" was not defined

[9] The 1851 Code of Iowa is available at http://tinyurl.com/qhxs9gu.

[10] Volumes I and II of the transcripts of the 1857 Constitutional Convention Debates are available at http://tinyurl.com/7qlnnj3.

during those debates, the framers at times used the term "infamous" in a way that connotes an inconsistency with or subversion of a democratic and free system of government. For example, Mr. Ells, a member of the Republic Party, described the Fugitive Slave Law as "infamous" because it unconstitutionally deprived men of their life, liberty, and property without a fair judicial proceeding. Transcript of the Debates of the Iowa Constitutional Convention of the State of Iowa, Vol. I, at 102. In the same vein, he described slavery as "infamous" in the context of its incompatibility with the equality of all people that underpins Jeffersonian ideas of democracy:

> I had lived in Virginia in my boyhood, and had seen slavery in its mildest forms; and having seen it, I know what it is. I say this to show that my feelings in early boyhood were opposed to slavery. . . . I had seen enough to teach me, as a boy, that the institution was an infamous one—that it was degrading to human nature. . . . I had learned there, too, that [Thomas Jefferson] defined the word "Democracy" to mean, equal and exact justice to all men.

Transcript of the Debates of the Iowa Constitutional Convention of the State of Iowa, Vol. II, at 907. James F. Wilson described the exclusion of African Americans from the right to vote as infamous for disgracing the state of Iowa:

> The Legislature of our own state has once blackened our statute book with a most infamous law, depriving one whole class and race of men from being witnesses in courts of law, against the spirit and letter of this same first section, and that, too, under our old Constitution. . . . That law remained in full force, a disgrace and reproach to our state, yet sanctioned in all our courts, until it was repealed at the last session of our legislature.

Id. at 652. Likewise, when discussing the drawing of electoral districts, Mr. Hall described the proposal under consideration as "infamous" because it gave an unfair amount of political power to a powerful minority of voters:

> I can tell gentlemen for what purpose I think it was done. It is an apportionment for party purposes, carried to the very extreme, so as to provide for the election of the United States Senator, which comes off in 1859. An equitable apportionment of the state would not give a majority of this convention quite as sure and certain success in that election, as it would if they took up *this infamous project*, got up the late general assembly. There was no other plan they could devise, by which they could give to so large a minority of this state the control of this election.

Id. at 1041 (emphasis added).

This understanding of infamous crime as it related to the right of suffrage was also found by a number of state supreme courts when interpreting their own state constitutions. The California Constitution adopted in 1849 included language similar to Iowa's and provided that "no person convicted of any infamous crime . . . shall ever exercise the privileges of an elector in this State."[11] In *Otsuka v. Hite*, 414 P.2d 412 (Cal. 1966), the California Supreme Court interpreted "infamous crime," which appeared in its state constitution in language very similar to Iowa's, to necessarily "be limited to conviction of crimes involving moral corruption and dishonesty, thereby branding their perpetrator as a threat to the integrity of the elective process." *Id.* at

[11] That language was changed in 1974. *See Ramirez v. Brown*, 528 P.2d 378 (Cal. 1974) (discussing generally the amendment to the California constitution following the U.S. Supreme Court decision in *Richardson v. Ramirez*, 418 U.S. 24 (1974), determining that the Fourteenth Amendment of the U.S. Constitution did not prohibit the states from depriving persons convicted of a felony of the right to vote).

414. *See also* Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, at 407 (Table A.7 Suffrage Exclusions for Criminal Offenses: 1790-1857), Revised Ed. 2009) (noting the California legislature applied the infamous crimes clause to exclude from the right of suffrage those persons convicted of "*bribery, perjury, forgery, or other high crime*") (emphasis added).

Similarly, the Illinois Constitution of 1818 provided the legislature with the "full power to exclude from the privilege of electing or being elected any person convicted of *bribery*, *perjury*, or any *other* infamous crime." *Id.* (emphasis added). The 1820 Missouri Constitution also disqualified "persons convicted of *electoral bribery*, for ten years," and empowered its legislature to "exclude . . . from the right of suffrage, all persons convicted of *bribery, perjury, or other infamous crime*." *Id.* (emphasis added). Like these states, Iowa's history and constitutional text demonstrate that "infamous crimes" are crimes involving an "affront to democratic governance" such that to allow that person to vote and run for public office would undermine the regulatory purpose of maintaining the integrity of the ballot box.

B. The "*Crimen Falsi*" Standard is Inconsistent With The Text And History of The Iowa Constitution

A careful review of the text and legislative history of the Iowa Constitution does not provide any particular indication that the *crimen falsi* standard is the most appropriate standard for interpreting the Infamous Crime clause. Furthermore, the commonplace and often petty nature of many theft crimes, which are considered

crimes of dishonesty for purposes of impeaching a witness under the Iowa Rules of Evidence, Iowa R. Evid. 5.609(*a*)-(*b*); *State v. Dudley,* 856 N.W.2d 668 (Iowa 2014), militate against the *crimen falsi* standard, because it is inconsistent with the prospect of lifetime disenfranchisement. *See* Iowa R. Evid. 5.609(b) (limiting admission of evidence of a crime of dishonesty to ten years since the date of conviction or release from confinement). The same is true of petty crimes involving dishonesty and their relationship to the integrity of the ballot box.

Notably, unlike Iowa, the states that utilize a *crimen falsi* standard automatically restore citizens' voting rights upon completion of sentence. *See Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Commw. Ct. 2000), *aff'd*, 783 A.2d 763 (Pa. 2001) (per curiam) (the right to vote is automatically restored after completion of the term of imprisonment in Pennsylvania); Ark. Const. amend. 51, § 11(d)(2)(D) (restoring rights upon completion of sentence). In other words, the states that employ the *crimen falsi* standard for disenfranchisement do not, like Iowa, disenfranchise such offenders for life, and with good reason: permanent expulsion from the democratic process is entirely unnecessary to maintain the integrity of elections for an offense for a crime like larceny.

C. The "Moral Turpitude" Standard is Inconsistent With The Text And History of The Iowa Constitution, And Fails to Provide a Constitutionally Valid Standard For Disenfranchisement

A ruling adopting the "moral turpitude" standard for defining infamous crime would be inconsistent with the text and history of the Iowa Constitution. Moreover,

the notion of "moral turpitude" is prohibitively vague, rife with a history of racial discrimination, and incompatible with an understanding of the regulatory purpose of protecting the integrity of the democratic process.

Drafted at the halfway mark between our constitutional conventions of 1846 and 1857, the text of the 1851 Iowa Code shows that Iowa lawmakers were familiar with the legal concepts of "infamous crime" and "moral turpitude" as separate and distinct. *See* Iowa Code Chapter 30, § 339(3) (1851) (allowing for an election to be contested on the grounds that the winner had "been duly convicted of an infamous crime"); Iowa Code Chapter 95, § 1621(1) (1851) (allowing for the suspension or revocation of an attorney's license to practice law "[w]hen he has been convicted of a felony or misdemeanor involving moral turpitude"[12]). The language used in the 1851 Code was adopted wholesale in the Iowa Code of 1860, the first code written after the 1857 constitutional convention. *See* Iowa Code Chapter 37, § 569(3) (1860); Chapter 114, § 2711(1) (1860). Likewise, the Iowa Supreme Court also applied the concept as early as 1851. *See Burton v. Burton*, 3 Greene 316 (Iowa 1851) (because poisoning a neighbor's livestock was an act of moral turpitude, an accusation of such was actionable as slander). Significantly, in Iowa, the concept of moral turpitude evolved

[12] This text further illustrates why the terms "moral turpitude" and "infamous" are not synonymous. As the text states, there are at least some misdemeanors that involve "moral turpitude." Yet as the plurality held in *Chiodo*, misdemeanors can never be infamous crimes. *Chiodo*, 846 N.W.2d at 857 (Cady, C. J., for the plurality); *see also id.* at 860 (Mansfield, J., for the special concurrence).

not in the context of regulating voting, but, like in many states, as a test for claims of per se slander. Julia Ann Simon-Kerr, *Moral Turpitude*, 2012 Utah L. Rev. 1001, 1002, 1018 (2012).

The lawmakers in attendance at the 1857 constitutional convention were aware of "moral turpitude," understood it as a legal concept distinct from "infamous," and chose only to disenfranchise those convicted of infamous crimes, not all crimes involving moral turpitude. Had the founders meant to disenfranchise the larger category of all persons convicted of crimes involving moral turpitude, they would have done so by using those words. *See Miller v. Marshall Cnty.*, 641 N.W.2d 742, 749 (Iowa 2002) ("We assume the legislature intends different meanings when it uses different terms in different portions of a statute.") (citing Norman J. Singer, *Sutherland Statutory Construction* § 46:06, at 194 (6th ed. 2000)); *Dolphin Residential Coop., Inc. v. Iowa City Bd. of Review*, No. 13-1031, 2015 WL 2261250, at *16 (Iowa May 15, 2015) ("The legislature's use of distinct terms to refer to different classes of persons who take part in the process . . . manifests its intent that these participants serve different functions.")

While it is true that some states did adopt a moral turpitude standard for disqualifying voters, this did not occur until a generation after the Iowa Constitution was written, and was done for the impermissible purpose of barring African Americans from voting. Georgia was the first state to disenfranchise citizens convicted of crimes of moral turpitude in 1877. Ga. Const. of 1877, Art. II, § 2,

para. 1 (disqualifying individuals convicted "of any crime involving moral turpitude"). Alabama followed suit in 1901. Ala. Const. of 1901, Art. VIII, § 182. When it reviewed this provision of Alabama's Constitution, the U.S. Supreme Court found that there was overwhelming historical evidence that crimes of moral turpitude had been included because these crimes "were believed by the [Alabama] delegates to be more frequently committed by blacks." *Hunter v. Underwood*, 471 U.S. 222, 226 (1985). The Court held that the Alabama provision had used the ambiguous term moral turpitude specifically to advance the lawmakers' racial animus against African Americans, and struck it down as a violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 233. Moral turpitude laws are rife with racial discrimination, at the ballot box and beyond, and incompatible with the modern understanding of the integrity of the democratic process.

4. Because Her Conviction Was Not Infamous, Defendants' Enforcement of Statutes, Regulations, Practices, And Forms Violates Mrs. Griffin's Right to Vote.

Iowa Code section 39.3(8), as well as related statutes, regulations, practices and forms that disqualify persons convicted of any felony, are unconstitutional as applied to those persons, like Petitioner, who are convicted of a felony that does not meet the definition of infamous crimes under our state constitution. Because Mrs. Griffin's conviction for delivery of less than 100 grams of cocaine does not meet the nascent test outlined in *Chiodo* as an offense that undermines the process of democratic governance through elections—or any of the other possible standards through which

that test could be applied—Mrs. Griffin has not been convicted of an infamous crime. Accordingly, it is an unconstitutional deprivation of her right to vote for the Defendants to enforce Iowa's statutes, regulations, practices, and forms to prohibit Mrs. Griffin from exercising the franchise.

The Iowa legislature may not add to nor subtract from the qualifications of voters set forth in the Constitution, and regulations limiting the right to vote of qualified electors must survive "careful and meticulous" scrutiny and must be shown to be purposed to facilitate and secure, rather than subvert or impede, the right to vote. Iowa Code Sections 39.3(8), 43.18(9), 48A.6, 48A.14, 48A.30(1)(d), 49.79, and 57.1(2)(c), as well as the current voter registration forms and related regulations, and the Governor's Executive Order 70 and related procedures, all serve to disqualify persons convicted of any felony offense as electors, regardless of whether the felony is an infamous crime. Because those statutes, regulations, practices, and forms are both an unlawful statutorily imposed modification of the constitutional qualifications of voters, and are intended to impede the rights of those persons who are convicted of a non-infamous felony from voting, they are unconstitutional as applied to those Iowans. Mrs. Griffin's underlying felony offense, delivery of less than 100 grams of cocaine, is not an infamous crime, but nonetheless disqualifies Mrs. Griffin as an elector pursuant to those statutes, regulations, forms, and procedures. Accordingly, they serve to unconstitutionally deprive Mrs. Griffin of her right to vote.

"[T]he right to vote is a fundamental political right. It is essential to representative government." *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978) (overturning most of the Iowa district court's denial of provisional ballots in a contest for Keokuk County supervisor in favor of counting the disputed ballots, even when the ballots failed to strictly comply with the statute, on the grounds that the voters' intent could be clearly discerned) (citing *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964)). "The legislature may not add to or subtract from the voter qualifications under the constitution." *Chiodo*, 846 N.W.2d at 852 (citing *Coggeshall v. City of Des Moines*, 117 N.W. 309, 311 (Iowa 1908) (first case establishing women's then-limited statutory right of suffrage prior to 1920 ratification of the Nineteenth Amendment to the U.S. Constitution). "The right of suffrage is a political right of the highest dignity, abiding at the fountain of governmental power, and is for the consideration of the people in their capacity as creators of the Constitution, save as that instrument may authorize a regulation of its mode of exercise." *Coggeshall*, 117 N.W. 309, 312. "The doctrine that, as the Constitution of the state is a limitation of power, the Legislature may enact laws not prohibited, has no application, for, the section quoted having designated the precise qualifications of electors, it thereby determines who shall exercise the privilege of voting, and necessarily prohibits others or disqualifying those so endowed with that privilege." *Id.*

"[R]egulatory measures abridging the right to vote 'must be carefully and meticulously scrutinized.'" *Chiodo*, 846 N.W.2d at 856 (quoting *Devine*, 268 N.W.2d at

623). Measures that limit the right to vote "must be 'necessary to promote a compelling governmental interest.'" *Chiodo*, 846 N.W.2d at 856 (citing *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969))). "Statutory regulation of voting and election procedure is permissible so long as the statutes are calculated to facilitate and secure, rather than subvert or impede, the right to vote." *Devine*, 268 N.W.2d at 623. Legislation that regulates voting must also be shown to have a legitimate purpose. *Id.* "Among legitimate statutory objects are shielding the elector from the influence of coercion and corruption, protecting the integrity of the ballot, and insuring the orderly conduct of elections." *Id.* Disputes are resolved in favor of the protection of a voter's right to exercise the franchise: "However, because the right to vote is so highly prized, these statutes must be construed liberally in favor of giving effect to the voter's choice, and every vote cast enjoys the presumption of validity." *Id.*

Once it is clear that Mrs. Griffin's underlying offense does not serve to disenfranchise her pursuant to the state constitution, those measures must be necessary to promote a compelling governmental interest to survive as applied to Mrs. Griffin. *See Chiodo*, 846 N.W.2d at 856. They fail to meet the rigors this "careful and meticulous[]" scrutiny. *Id.* (quoting *Devine*, 268 N.W.2d at 623).

The measures are clearly calculated and have the effect of prohibiting all citizens with a felony conviction from voting based on an understanding of the infamous crimes clause that we now know is flawed and overbroad. That intent—to

"subvert and impede" the right of Mrs. Griffin to vote, rather than to "facilitate and secure" voting rights—is impermissible. *See Chiodo*, 846 N.W.2d at 856 (citing *Dunn*, 405 U.S. at 343 (quoting *Shapiro*, 394 U.S. at 634)). Applied to an elector entitled to vote by our state constitution, those measures fail to accomplish any of the legitimate purposes provided by the court: "shielding the elector from the influence of coercion and corruption, protecting the integrity of the ballot, and insuring the orderly conduct of elections." *Devine*, 268 N.W.2d at 623. Iowa Code § 39.3(8)—as well as related statutes, regulations, practices and forms which disqualify persons convicted of any felony—are unconstitutional as applied to the category of felony crimes, including Mrs. Griffin's offense, that do not meet the definition of infamous crimes under Article II, Section 5 of the Iowa Constitution.

5. Defendants' Interference With Mrs. Griffin's Fundamental Right to Vote Constitutes a Denial of Due Process Under The Iowa Constitution.

Among the fundamental interests protected by the Iowa Constitution's due process clause is the right of franchise. *Chiodo*, 846 N.W.2d at 848; *Devine,* 268 N.W.2d at 623; *see also Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665-66 (1966); *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (noting that the right to vote is "a fundamental political right, because [it is] preservative of all rights"); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" (quoting *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184

(1979)); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983)(the right to vote is one of the liberty interests protected by the due process clause).

The Defendants' denial of Mrs. Griffin's fundamental right to vote is also a violation of her substantive rights of due process under the state constitution. Iowa's Due Process Clause provides that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. Art. I, § 9. The substantive due process inquiry is two-step. First, the Court determines the nature of the individual right that is affected by the challenged government action. *See State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005). Second, if the Court determines that the right implicated is fundamental, it applies strict scrutiny to the government action; if non-fundamental, it applies rational basis review. *Id.; State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007); *State v. Krier*, 772 N.W.2d 270, 2009 WL 2184825 (Iowa Ct. App. 2009) (unpublished). For a government action to survive strict scrutiny, it must be narrowly tailored to serve a compelling state interest. *Seering*, 701 N.W.2d at 662; *State v. Hartog*, 440 N.W.2d 852, 854 (Iowa 1989); *State v. Sanders*, No. 08-1981, 2009 WL 3337616, at *5 (Iowa Ct. App. Oct. 7, 2009); *In the Interest of J.L., L.R., and S.G.*, 779 N.W.2d 481, 491 (Iowa Ct. App. 2009)(finding the state Indian Child Welfare Act's prohibition on a child's ability to object to a motion to transfer based upon their best interests, and from introducing evidence of their best interests, violated the children's substantive due process rights in familial association and personal safety).

The due process clauses of the United States and Iowa Constitutions "are nearly identical in scope, import, and purpose." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 237 (Iowa 2002). However, the Iowa Supreme Court has jealously guarded its constitutional independence in the area of protection of fundamental rights and liberties, and has on occasion interpreted state due process to be more protective of its citizens than under the U.S. Constitution. *See State v. Cox*, 781 N.W.2d 757, 761-62 (Iowa 2010); *Callender v. Skiles*, 591 N.W.2d 182, 187, 189 (Iowa 1999).

Compelling governmental interests in regulating voting include "shielding the elector from the influence of coercion and corruption, protecting the integrity of the ballot, and insuring the orderly conduct of elections." *Devine*, 268 N.W.2d at 623. Thus, statutes limiting the franchise to those electors entitled to vote under our state constitution would serve a compelling governmental interest. However, those statutes must be sufficiently narrowly tailored to meet that interest without serving to "subvert or impede" the right to vote qualified electors to survive the due process inquiry.

By including all felonies, not just those which are infamous, under Article II, Section 5, the governing Iowa statutes, regulations, forms and procedures are not narrowly tailored to accomplish a compelling governmental interest, because they unnecessarily block thousands of constitutionally qualified Iowa electors of their right to vote. Those persons, including Mrs. Griffin, who are wrongly barred from the ballot box, must apply to the Governor of Iowa for restoration of their right to vote, a right of which they should never have been deprived. (App. Exs. 4, 5.) The

application process is a multi-step paperwork process, requiring proof that the applicant has fully paid or is current on their payments for court-imposed fines, fees and restitution, a copy of their Iowa Criminal History Record from the Iowa Division of Criminal Investigation, which costs $15.00 per request, and can take months to complete. (App. Exs. 6-8.) Thus, in addition to the financial costs of submitting an application, the process significantly delays an applicant from registering to vote, given the administrative requirements for the applicant as well as processing time on the part of the Department of Public Safety to conduct a criminal background check, and the Governor's Office to review applications.

In Mrs. Griffin's case, the burden was especially heavy, resulting in the additional harm of a terrifying and traumatic criminal prosecution for perjury, which, in turn, required her to spend thousands of dollars in attorney's fees to successfully defend. The heavy nature of the burden is further illustrated by the extremely low numbers of potentially eligible Iowans who have applied for a restoration of rights. *See* Ryan J. Foley, "Iowa Governor Restores More Felons' Voting Rights," *Washington Times*, Jan. 14, 2014, http://tinyurl.com/ob2qkkn (from 2011 to 2013, an estimated 25,000 Iowans discharged their sentences, but only 40 regained their voting rights.)

Accordingly, those statutes and regulations do not meet the rigors of strict scrutiny due process analysis under the Iowa constitution and are unconstitutional as applied to the Petitioner.

V. CONCLUSION

While the Court should adopt the "Affront to Democratic Governance" standard to determine which felonies are infamous crimes, Mrs. Griffin's crime is not an infamous crime under any application of the test set forth by the plurality in *Chiodo*. It fails to meet the nascent test because it is not a "particularly serious" offense as understood in the context of Article II's purpose in regulating elections, does not have a "nexus to preserving the integrity of the election process," and does not involve an element of "specific criminal intent." Because Mrs. Griffin has not been convicted of an "infamous crime" under the Iowa Constitution, the statutes, regulations, forms, and procedures which disqualify Mrs. Griffin from registering to vote and voting constitute a complete denial of her right to vote in violation of the Iowa Constitution. Defendants' complete and permanent deprivation of Mrs. Griffin's voting rights, as well as the high burden that the rights restoration process places on her exercise of the right to vote, violates her right to substantive due process assured the Iowa Constitution.

This matter is appropriate for declaratory relief pursuant to Iowa Rule of Civil Procedure 1.1101 and granting such relief would terminate the legal dispute that gave rise to this Petition. This matter is also appropriate for permanent injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501. Absent injunctive relief, Mrs. Griffin will suffer irreparable injury for which there is no adequate remedy at law

for every future election in this state for which the Petitioner would otherwise be able to exercise her fundamental right to vote.

The Plaintiff respectfully prays this Court enter judgment as follows.

(1) Declaring that:

a. Iowa's statutory and regulatory prohibitions, including registration forms and departmental processes, that prohibit from voting and holding public office Iowans who have completed sentences for a crime classified as a felony which is not an infamous crime, are invalid and unconstitutional; and

b. Iowa residents who have completed their sentence for a criminal conviction that is classified as a felony but which does not meet the constitutional threshold of infamous crimes, including Mrs. Griffin, may not be denied the right to register to vote and vote or hold public office;

(2) Enjoining Defendants from:

a. Refusing to allow Iowans who have completed a criminal sentence that is classified as a felony but which is not an infamous crime under the Iowa Constitution to register to vote, cast a ballot, have that ballot counted, and run for public office; and

b. Criminally prosecuting for election misconduct, registration fraud, voter fraud, perjury, or otherwise imposing civil or criminal sanctions on persons who have registered to vote or voted in Iowa who at the time

had completed a criminal sentence that is classified as a felony but which is not an infamous crime under the Iowa Constitution;

(3) Issuing a Writ of Mandamus requiring that Defendants immediately permit Iowa residents who have completed their sentence for a criminal conviction that is classified as a felony, but do not meet the constitutional threshold test for infamous crimes, including Mrs. Griffin, to register to vote and to vote in upcoming elections held in our state;

(4) For Plaintiff's costs incurred herein; and,

(5) For such other and further relief as the Court deems just and proper.

WHEREFORE, the Petitioner, Kelli Jo Griffin, ask this Court to recognize and protect her constitutional rights to vote and due process by granting summary judgment in her favor.

Respectfully submitted,

/s/Rita Bettis
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ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 8th day of June 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

/s/Rita Bettis

Signature of person making service.

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. PAUL PATE, in his official capacity as the Iowa Secretary of State and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa, Respondents.	No. EQCE077368 **RESPONDENT PATE'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Iowa Secretary of State Paul Pate, pursuant to Iowa Rule of Civil Procedure 1.981, and for his Motion for Summary Judgment respectfully states as follows:

1. Secretary Pate is entitled to summary judgment on Ms. Griffin's declaratory action for at least three reasons.

2. First, the Iowa Code explicitly disqualifies persons who have been convicted of a felony under Iowa or federal law from voting. The Iowa Supreme Court has not invalidated that definition.

3. Second, this statutory disqualification is consistent with the Iowa Constitution's declaration that a person convicted of an "infamous crime" shall not have the rights of an elector.

4. Third, assuming arguendo that the statutory definition is too broad and not all felonies are infamous, the statute is constitutional as applied to Ms. Griffin as Delivery of 100 Grams or Less of Cocaine is an infamous crime.

WHEREFORE Secretary Pate respectfully requests, for the reasons set forth herein, this court grant its Motion for Summary Judgment and thereby enter judgment as a matter of law in favor of the Respondents. Secretary Pate requests such further relief as may be just and equitable under the circumstances.

Respectfully submitted,

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. PAUL PATE, in his official capacity as the Iowa Secretary of State and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa, Respondents.	No. EQCE077368 **RESPONDENT PATE'S BRIEF IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT**

COMES NOW Iowa Secretary of State Paul Pate and submits this Memorandum of Authorities in support of his Motion for Summary Judgment.

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STATEMENT OF THE CASE

The Petitioner, Kelli Jo Griffin filed a Petition for Declaratory Judgment, Supplemental Injunctive Relief, and Mandamus Relief, clarifying her right to vote in Iowa. (First Amended Petition). Article II, section 5 of the Iowa Constitution states, "A person adjudicated mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector." Iowa Code section 39.3(8) defines "infamous crime" as any felony under Iowa or federal law. In her Petition, Griffin, a convicted felon, challenged the constitutionality of Iowa's statutory voting scheme, which defines "infamous crime" as any felony under Iowa or federal law.

STATEMENT OF UNDISPUTED FACTS

The Petitioner, Kelli Jo Griffin, is an Iowa resident. (Facts ¶ 1, App. 1). On January 7, 2008, Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, in violation of Iowa Code section 124.401(1)(*c*)(2)(b) (2007), a Class C felony. (Facts ¶ 12, App. 5–7). Petitioner was sentenced to a term of imprisonment not to exceed ten years. (App. 5). She successfully discharged her sentence on January 7, 2013. (Facts ¶ 13, App. 71). But for her 2008 felony conviction, the Petitioner satisfies the requirements to register to vote under Iowa's existing statutes and regulations. (Facts ¶ 24, App. 1–2). Griffin now wishes to register to vote and vote in elections that impact her, her family, and her community without fear of subsequent criminal prosecution. (Facts ¶ 26, App. 3).

SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate when the entire record before the court shows that no genuine issue of material fact is in dispute "and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). The record on summary judgment includes the pleadings, depositions, answers to interrogatories, admissions on file, affidavits, and exhibits. *Id.*; *Fischer v. Unipac Serv. Corp.*, 519 N.W.2d 793, 796 (Iowa 1994). The moving party carries the burden of showing no issue of material fact exists. *Wright v. American Cyanamid Co.*, 599 N.W.2d 668, 670 (Iowa 1999).

An issue of fact is "material" to the case when its determination may affect the outcome of the suit, given the applicable governing law. *Baratta v. Polk County Health Servs.*, 588 N.W.2d 107, 109 (Iowa 1999) (citing *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992)). An issue of fact is "genuine" when the evidence is such that a reasonable jury could return a verdict for the party resisting the motion for summary judgment. *Id.* (citation omitted). Thus, in determining whether a motion for summary judgment is to be granted, this Court must determine whether "reasonable minds would differ on how the issue should be resolved." *Fettkether v. City of Readlyn*, 595 N.W.2d 807, 813 (Iowa Ct. App. 1999) (citing *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996)).

This is a rare case where all parties agree that no genuine issue of material fact exists and the matter should be disposed of on summary judgment. To that end, the parties have jointly submitted a Statement of Undisputed Facts and a Joint Appendix. For the reasons discussed below, the State is entitled to summary judgment.

ARGUMENT

I. Ms. Griffin is Not Entitled to Declaratory Relief—She Has Not Met Her Heavy Burden to Prove Iowa's Statutory Scheme is Unconstitutional Beyond a Reasonable Doubt.

Ms. Griffin is not entitled to declaratory relief for at least three reasons. First, the Iowa Code explicitly disqualifies persons who have been convicted of a felony under Iowa or federal law from voting. Second, this statutory disqualification is consistent with the Iowa Constitution's declaration that a person convicted of an "infamous crime" shall not have the rights of an elector. Third, assuming arguendo that the statutory definition is too broad and not all felonies are infamous, the statute is constitutional as applied to Ms. Griffin as Delivery of 100 Grams or Less of Cocaine is an infamous crime.

Article II, section 5 of the Iowa Constitution states, "A person adjudicated mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector." The privileges of an elector, under Iowa law, include the right to seek and hold office and the right to vote. *See* Iowa Code §§ 39.3(6), 39.26, 39.27, 48A.5. While Iowa Code section 48A.5 sets forth the qualifications for voting, section 48A.6 disqualifies "a person who has been convicted of a felony as defined in section 701.7, or convicted of an offense classified as a felony under federal law" from voting or registering to vote in Iowa. This provision mirrors the statutory definition of "infamous crime" in Iowa Code section 39.3(8).

It is undisputed that Ms. Griffin has been convicted of a felony under Iowa Code section 701.7 and is thereby disqualified from voting under Iowa's statutory scheme. The purely legal question presented in this case, therefore, is whether Petitioner's prior felony conviction of Delivery of 100 Grams or Less of Cocaine is an "infamous crime" within

the meaning of Article II, section five of the Iowa Constitution so as to disqualify her from the rights of an elector.[1]

Before delving into the legal issues presented, it's important to remember the tenants of statutory interpretation. Statutes are "cloaked with a presumption of constitutionality." *State v. Thompson*, 836 N.W.2d 470, 483 (Iowa 2013); Iowa Code § 4.4(1) (2013) ("In enacting a statute, it presumed that . . . '[c]ompliance with the Constitution of the state and of the United States is intended.' "). In challenging a statute, or as in this case a statutory scheme, the challenger has a hefty burden. The challenger must (1) prove unconstitutionality beyond a reasonable doubt, and (2) refute every reasonable basis upon which the statute could be found constitutional. *Id.* "[I]f the statute is capable of being construed in more than one manner, one of which is constitutional, [the court] must adopt that construction." *Id.*

A. Iowa Law Disqualifies Persons Who Have Been Convicted of a Felony under Iowa or Federal Law from Voting. The Iowa Supreme Court has examined the concept of voter disqualification and "infamous crime" on four separate occasions. The first opportunity was in *Flannagan v. Jepsen*, 177 Iowa 393, 158 N.W.2d 641 (1916). Flannagan had been convicted of contempt for violating a decree enjoining him from maintaining a liquor nuisance and sentenced to one year of hard labor at Fort Madison. *Id.* at 641. The issue in *Flannagan*, was whether a crime was so "infamous" as to afford an individual all the rights of a criminal defendant. In resolving the case, the Court

[1]In her Petition, Griffin alleges two separate counts—(1) that Iowa's statutory scheme deprives her of the right to vote, and (2) that Iowa's statutory scheme denies her due process by interfering with her fundamental right to vote. By structuring her case in this manner, the Petitioner is essentially arguing that a provision of the Iowa Constitution is unconstitutional. Such is not a tenable argument. The two questions Griffin presents are derivative of the single legal issue before the court—the meaning of the constitutional phrase "infamous crime." While certainly the concepts of suffrage and due process inform that definition, they do not present separate arguments. Defining "infamous crime" disposes of the constitutional issues presented.

adopted without analysis the federal definition of infamous crime which linked the concept of infamous crime with infamous punishment. At the time *Flannagan* was written, infamous punishment included any sentence to the penitentiary for hard labor. *Id.* at 644 (relying upon *Ex Parte Wilson*, 114 U.S. 417, 429 (1885)). The constitutional provision at issue in *Flannagan*, however, was the Fifth Amendment of the U.S. Constitution and not the Infamous Crime Clause of the Iowa Constitution.

The Court's next opportunity to opine on the meaning of "infamous crime" occurred just months later in *Blodgett v. Clarke*, 177 Iowa 575, 159 N.W.2d 243 (1916). Blodgett had been convicted of forgery, had been sentenced to a term of imprisonment, and sought higher office after his release. *Id.* at 244. Unlike *Flannagan*, therefore, the meaning of Iowa's Infamous Crime Clause was at issue in *Blodgett*. In resolving the case, however, the Court adopted the *Flannagan* link between infamous crime and infamous punishment without analysis.

The Court repeated the same language, again without analysis, in *State ex rel. Dean v. Haubrich*, 248 Iowa 978, 83 N.W.2d 451 (1957). Dean had been convicted in the United States District Court of income tax evasion and sentenced to one year imprisonment. *Id.* at 452. Dean was later elected mayor of Mapleton. The issue in *Dean* was not, however, the meaning of Iowa's Infamous Crime Clause, but rather whether the Governor of Iowa had the power to restore citizenship or elector rights when an individual has been convicted of a federal felony. *Id.*

This link between infamous crime and infamous punishment continued unabated until the ballot challenge in *Chiodo*. Chief Justice Cady, writing for a plurality of the Court, concluded that misdemeanors were not infamous crimes regardless of whether an

infamous punishment (i.e., imprisonment) was possible. *Chiodo*, 846 N.W.2d at 857. In so holding, the plurality decoupled the explicit link between infamous crime and infamous punishment. Chief Justice Cady—in dicta—further opined that perhaps not all felonies were infamous crimes even though all felonies are punishable by a term of imprisonment. *Id.* The plurality, however, stopped short and explicitly did *not* overturn the legislative definition of "infamous crime." *Id.* ("Our decision today is limited. It does not render the legislative definition of an "infamous crime" under Iowa Code section 39.3(8) unconstitutional.").

Writing for the special concurrence, Justice Mansfield found that while the prior cases linked infamous crime and infamous punishment, the true line for infamy purposes was between felonies and misdemeanors. *Id.* at 861 (Mansfield, J., specially concurring). Like the plurality, the concurrence linked the infamy of a crime with its nature—not the available punishment. Unlike the plurality, the concurrence thought the denotation of a crime as felonious reflective of the serious nature of the offense. *Id.* Justice Wiggins dissented, upholding the link between infamous crime and infamous punishment, finding that all aggravated misdemeanors are infamous because imprisonment is a possible sanction. *Id.* at 864–65 (Wiggins, J., dissenting).

The plurality opinion in *Chiodo* purports to overturn *Blodgett* and disapprove of language in *Flannagan* and *Dean*. Such a declaration, however, is impossible. While there were three votes in the plurality to overturn this trilogy of cases, there were three votes—two in the special concurrence and one in dissent to affirm the prior case law—at least on that point. *Id.* at 861 (Mansfield, J., specially concurring); *Id.* at 865 (Wiggins,

J., dissenting). The Court in *Chiodo* was at equipoise on this issue and thus the ultimate issue in *this* case.

While the Court left many questions unanswered in *Chiodo*, it is important to remember what the Court affirmatively did not do. As noted above, the Court did not overturn the statutory definition of "infamous crime." Iowa Code section 39.3(8) and 48A.6, which disqualify convicted felons from voting in Iowa, remain good law. Under both existing case law and the statutory scheme, therefore, Griffin has lost the "privileges of an elector." On that basis alone, summary judgment should be granted to the Respondents as Griffin is not entitled to declaratory relief. *See State v. Miller*, 841 N.W.2d 583, 584 n.1 (Iowa 2014) (applauding the district court and the court of appeals for relying on precedent, noting that "it is the role of the supreme court to decide if case precedent should no longer be followed").

B. Iowa's Statutory Scheme is Consistent with the Iowa Constitution's Disqualification of Persons Convicted of Infamous Crimes. Even under a constitutional analysis of "infamous crime," summary judgment should nevertheless be granted to the Respondents. "Infamous crime" under the Iowa Constitution has always and should continue to be synonymous with felony: indeed, this is the only definition of infamous crime that harmonizes a textual analysis, the historical context, and the practical realities of democratic governance. The alternative, nascent test, as described in the *Chiodo* plurality is both inconsistent with Iowa law and patently unworkable.

The Iowa Supreme Court has always drawn the infamy line between felonies and misdemeanors. When *Flannagan*, *Blogett*, and *Dean* were decided, Iowa's criminal justice system was binary—there were only felonies and misdemeanors. Felons,

moreover, went to prison, misdemeanants went to jail. *Id.* at 852. Viewed in this context, the Court's link in *Flannagan*, *Blogett*, and *Dean* of infamous crime with infamous punishment is shorthand for defining infamous crimes as felonies. Defining an infamous crime as a felony is a contemporary reflection of the serious nature of a particular offense.

Defining an infamous crime as a felony is further consistent with a textual analysis of the Infamous Crime Clause. The constitutional provision at issue in this case, was enacted in 2008. In 2006 and 2007, the General Assembly voted to amend the Article II, section 5 of the Iowa Constitution. *See* 2006 Iowa Acts ch. 1188, § 1, 2007 Iowa Acts ch. 223, § 1. That amendment was ratified in 2008 by popular vote. Admittedly, that amendment was intended to remove the offensive and outdated "idiot" language from the Constitution. Nevertheless, both the General Assembly and the voters had the opportunity to amend or clarify the infamous crime language and chose not to do so.

"When the legislature amends some parts of a statute following a recent interpretation, but leaves others intact, this 'may indicate approval of interpretations pertaining to the unchanged and unaffected parts of the law.' " *State v. Sanford*, 814 N.W.2d 611, 619 (Iowa 2012) (quoting 2B Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 49.10, at 144 (7th ed. 2008)). Thankfully in interpreting the meaning of the 2008 Infamous Crime Clause, this court does not have to look in the weeds to often ambiguous legislative history. In 2006, 2007, and 2008, all felonies were indisputably infamous crimes—Iowa Code section 39.3(8) explicitly stated as much. Both the Legislature and the public are presumed to know the law. By failing

to alter the Infamous Crime Clause when other portions of Article II, section 5 were amended, the Legislature and the public effectively ratified the definition of infamous crime as all felonies under state and federal law.

This interpretation of the 2008 Infamous Crime Clause also is consistent with the historical context of the Infamous Crime Clause. In 1839, the territorial code provided:

> Each and every person in this Territory who may hereafter be convicted of the crime of rape, kidnapping, willful [*sic*] and corrupt perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, of serving as a juror, and giving testimony in this Territory.[2]

The State Laws of the Territory of Iowa, Code of Criminal Jurisprudence, Tenth Div., § 109, at 182 (1839). The crimes denoted above clearly are not crimes limited to democratic governance or even to crimes of honesty. These crimes run the full gamut from crimes of moral turpitude to pure property offense to crimes of violence. Not on the list? Election misconduct. The common thread of these crimes is not their nexus to the ballot box; rather, the common thread is the offender's serious disregard for the rules of civil society.

In 1844, the proposed Iowa Constitution denied the privileges of an elector to "persons declared infamous by act of the legislature." Iowa Const. art. III, § 5 (1844).[3] The 1857 language denying the rights of an elector to those convicted of an infamous crime was not a rejection of the legislature's ability to define infamous crimes. Instead the 1857 language was a reflection of the territorial statute. All the 1857 language did

[2] Little can be inferred from the absence of murder from this list as murder was punishable in 1839 by the death penalty. Denoting it as an infamous crime was unnecessary. *See* The Statute Laws of the Territory of Iowa, Code of Criminal Jurisprudence, First Div., § 2, at 150.

[3] The territorial law of Iowa wholly derived from the Wisconsin territorial law. See Act of June 12, 1835, 5 Stats.,235 Chap. XCVI, § 12, at 71.

was shift the focus from a person being declared infamous to a crime being infamous. The legislature and contemporary understanding of infamy is essential under either the 1844 or 1857 provisions. While no one disputes that the judiciary has exclusive and final jurisdiction over the interpretation of a constitutional provision, this is a unique constitutional provision. Although it is the judiciary's bailiwick to define constitutional provisions, it is the legislature's province to define crimes. *State v. Robbins*, 257 N.W.2d 63, 67 (Iowa 1977) ("All crimes in this State are statutory."). Thus, these two branches will always work in tandem in defining "infamous crime." *See Ex Parte Wilson*, 114 U.S. at 427 (observing "[w]hat punishments shall be considered infamous may be affected by the changes of the public opinion from one age to another.").

While "infamous crime" and "felony" are both used in the 1857 Constitution, the terms are never used together in the same clause. The reason for this is clear—the drafters used different words because the words had a different purpose, not because they necessarily had a different meaning. As Justice Mansfield pointed out in his special concurrence, most of Iowa's constitutional provisions on suffrage were derived from the U.S. Constitution without analysis. The U.S. Constitution, like the Iowa Constitution, uses infamous crime and felony in different contexts even though the words are often synonymous. When Iowa's law is derived from another source, this Court will often look to the original source when interpreting Iowa's laws. Here, the United State Supreme Court has held that denying felons who have fully discharged their sentences the right to vote does not violate the Fourteenth Amendment. *Richardson v. Ramirez*, 418 U.S. 24, 94 S. Ct. 2655 (1974).

Based on this textual and historical analysis, there is no basis to limit infamous crime to felonies "that reveal[] that voters who commit the crime would tend to undermine the process of democratic governance through elections." *Chiodo*, 846 N.W.2d at 856. There is further no basis to presume that Iowa's framers intended the Infamous Crime Clause to be regulatory rather than punitive. Iowa does not have a constitutional provision requiring punishment to be "founded on the principles of reformation." *Chiodo*, 846 N.W.2d at 859 (Mansfield, J., specially concurring). Moreover, lost in the multitude of opinions in *Chiodo* is that the definition of infamous crime is not limited to who has the right to vote in Iowa. The definition of infamous crime applies to *all* the rights of an elector—including the right to seek and hold office. In this context, there is no reason not to conclude that Iowa's Infamous Crime Clause was not intended as punitive—as a forfeiture of the right to participate in civil society.

In any event, in examining the constitutionality of defining an infamous crime as a felony, it is not sufficient for Griffin to postulate what the framers *might* have intended or what *might* be the proper interpretation or policy judgment. In order to invalidate Iowa's statutory scheme, Griffin has to prove to this court that the legislature's definition is unconstitutional beyond a reasonable doubt. Based on the historical context and textual analysis outlined above, Griffin cannot meet this high burden.

Not only is defining an infamous crime as a felony consistent with this historical and textual analysis, it—unlike the alternative test—is easy to apply. As noted previously, the nascent test adopted by the *Chiodo* plurality limited infamous crimes to felonies "that reveal[] that voters who commit the crime would tend to undermine the process of democratic governance through elections." This test appears not to deem

certain categories of crimes infamous, such as election misconduct, but rather certain potential *voters*. If true, did the *Chiodo* plurality intend disenfranchisement to be determined in sentencing? Not only would that be a peculiar result, it would leave thousands of Iowa who were convicted of felonies, but discharged their sentences after January 2011, in a virtual legal limbo.

Assuming the *Chiodo* plurality intended to define particular crimes and not criminals as infamous, what felonies meet this standard would also take case-by-case adjudication—resulting in wholesale confusion on who can vote, who needs to apply for restoration, and potentially hundreds of lawsuits. If enfranchisement is not an individual sentencing determination, a line has to be drawn somewhere—between good governance felonies and other felonies, between felonies involving honestly and trustworthiness and other felonies, or between felonies and misdemeanors.

Where this line should be drawn is not the type of policy decision best remedied by the judiciary alone. In defining and categorizing crimes, the Iowa General Assembly draws this line everyday—often in consideration of the effect of that line drawing has on an individual's rights as an elector. Nowhere is this more evident than in the legislature's categorization of election misconduct crimes. In a 2002 amendment, the Legislature took the unusual step of stating its intent noting:

> It is the intent of the general assembly that offenses with the greatest potential to affect the election process be vigorously prosecuted and strong punishment meted out through the imposition of felony sanctions which, as a consequence, remove the voting rights of the offenders. Other offenses are still considered serious, but based on the factual context in which they arise, they may not rise to the level of offenses to which felony penalties attach.

Iowa Code § 39A.1(2), 2002 Acts, ch 1071, §1. Even in the broad classification of crimes with the strongest nexus to voting—election crimes—the Legislature carefully considered the nature of the acts underlying each crime and maintained the distinction between felony and misdemeanor for suffrage purposes.

Under the *Chiodo* plurality where the line is drawn is at best unclear. For example, are only felony election crimes infamous? What about perjury? If perjury is infamous, are other crimes that relate to honesty infamous, such as theft? Under this approach would murder, rape, and child molestation be considered infamous? Don't these crimes also show a complete disregard for the societal rules which undermine confidence in the offender's ability to participate in the democratic process?

Because the definition of infamous crime is not static—under any of the opinions in *Chiodo*—the legislature is the best indicator of the evolving standard of infamy. As the Supreme Court of Pennsylvania noted,

> [O]ur General Assembly, as a representative, political branch of government, sets public policy, which this Court enforces, subject to constitutional limitations. . . . Thus, the Legislature's determination as to whether a particular offense is serious enough *at a given time* to warrant the status of felony [for purposes of voting rights] reflects the public will as expressed through the ballot box, and this determination properly controls whether the offense in question was constitutionally infamous at the time of the officeholder's conviction.

Commonwealth ex rel. Pennsylvania Att'y Gen. Corbett v. Griffin, 946 A.2d 668, 675 (2008) (internal citation omitted) (emphasis added). Decoupling the definition of infamy from legislative judgment effectively freezes the concept of infamy in 1857 or even 1839.

Finally, putting aside the potential flood of litigation caused by the *Chiodo* plurality, the plurality ignores the logistical nightmare the decision would wreak. The plurality's constrained reading of the Infamous Crime Clause would allow convicted

felons to vote—not only when his/her sentence is discharged—but *while incarcerated*. Should Auditor Fraise establish a new polling station at the Iowa State Penitentiary? Inmates are counted for apportion purposes in the United States Census to create federal, state, and local voting districts. *See Dist. of Columbia v. U.S. Dep't of Commerce*, 789 F. Supp. 1179, 1189 (D.D.C. 1992); Iowa Code § 9F.6 (2013); *see also* Residence Rule and Residence Situations for the 2010 Census, United States Census *available at* http://www.census.gov/population/www/cen2010/resid_rules/resid_rules.html#sixteen (last accessed June 8, 2015).[4] Because of this, inmates would suddenly become a large voting bloc in several districts across the state. And because the Infamous Crime Clause applies to all the privileges of an elector, inmates—including convicted felons—would be eligible for elected office. Does anyone contend that the framers intended for prisoners to serve in the Iowa General Assembly?

C. Ms. Griffin was Convicted of an Infamous Crime Disqualifying Her from the Rights of an Elector. Regardless of the test employed, the Petitioner has been convicted of an infamous crime and is thus disqualified from voting under the Iowa Constitution. It is undisputed that Petitioner was convicted of a Class C Felony—Delivery of 100 Grams or Less of Cocaine. The distribution of illicit drugs is not a victimless crime. Unlike many of the crimes deemed infamous at the time of statehood, the distribution of narcotics is not a pure property crime.

Narcotics distribution strikes at the heart of civil society—ravishing both the user and those around him. As noted by the U.S. Department of Justice, illicit drug use causes

[4] Because inmates have not traditionally registered to vote while incarcerated, it is unclear where inmates would register to vote—where they are incarcerated or where they previous resided. A definitive answer to this question is made more difficult as inmates serve sentences of varying lengths. A person sentenced to life imprisonment at the Iowa State Penitentiary would presumably reside in Fort Madison while an individual serving a year may not.

"permanent physical and emotional damage to users and negatively impact[s] their families, coworkers, and many others with whom they have impact." Impact of Drugs on Society, U.S. Department of Justice, *available at* http://www.justice.gov/archive/ndic/pubs38/38661/drugImpact.htm (last accessed June 8, 2015). The societal costs of distributing narcotics are as great or greater than the majority of crimes defined as infamous in the 1839 territorial code. Delivery of 100 Grams or Less of Cocaine should be deemed an Infamous Crime. Iowa's statutory scheme is not unconstitutional as applied to the Petitioner.

II. Assuming Arguendo that the Statutory Definition is Unconstitutional Neither an Injunction Nor a Writ of Mandamus is Necessary.

In her prayer for relief, Griffin sought a declaratory order, injunctive relief, and a writ of mandamus. Griffin does not request injunctive or mandamus relief in order to establish rights, but instead to confirm the rights potentially established by declaratory order. *See Hewitt v. Ryan*, 356 N.W.2d 230, 233 (Iowa 1984) (noting that mandamus "is not to be used to establish right but to enforce rights that have already been established"). Essentially, Griffin seeks an injunction prohibiting the Respondents from violating the declaratory order and a writ of mandamus requiring Respondents to comply with the declaratory order. For example, Griffin seeks an injunction prohibiting the Respondents from "Criminally prosecuting for election misconduct, registration fraud, voter fraud, perjury, or otherwise imposing civil or criminal sanctions on Mrs. Griffins on account of voting with a felony conviction. . . ." (Amended Petition at 19). Neither injunctive or mandamus relief is appropriate under these circumstances.

First, courts have long assumed that government officials will give full credence to a court's order finding a statute or statutes unconstitutional. *See Phelps v. Powers*, No.

1:13-CV-00011, ___ F. Supp. 3d ____ (S.D. Iowa Dec. 3, 2014) (declining to enjoin Iowa prosecutors from enforcing flag discretion and misuse statutes); *see also Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973) (declining to address injunctive relief, assuming that state officials would abide by the court's decision). There is no reason to suggest that Secretary Pate would not fully and expeditiously comply with the court's declaratory order, necessitating further court intervention.

Second, Griffin has named Secretary Pate and Auditor Fraise as Respondents to this action—not the State of Iowa. Neither of these officials is responsible for criminal prosecution. They are simply not the proper party to enjoin. Additionally, even assuming Griffin's rights as an elector are established by a future declaratory order, she would need to register to vote before either Secretary Pate or Auditor Fraise had a duty to act. Granting an extraordinary remedy, such as mandamus, under these circumstances would be highly unusual.

CONCLUSION

Secretary Pate respectfully prays that this court grant summary judgment in his favor and uphold the constitutionality of Iowa's voting scheme.

Respectfully submitted,

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IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN,
Petitioner,

EQCE 077368

vs.

PAUL D. PATE, in his official Capacity as the Iowa Secretary of State, and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa
Respondents.

RESPONDENT FRAISE'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Respondent Denise Fraise, Lee County Auditor and pursuant to Iowa Rule of Civil Procedure 1.981 joins in Paul Pate's Motion for Summary Judgment as filed June 8, 2015.

_/s/ M P Short_____
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IOWA DISTRICT COURT FOR POLK COUNTY

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vs.

PAUL D. PATE, in his official Capacity as the Iowa Secretary of State, and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa
Respondents.

BRIEF

COMES NOW Respondent Denise Fraise, in her official capacity as Lee County Auditor and joins in Respondent Paul Pate's Brief in support of his Motion for Summary Judgment.

_/s/ M P Short_____
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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 PETITIONER'S RESISTANCE TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW, Petitioner Kelli Jo Griffin, by and through her attorneys, and respectfully asks this Court to deny the Respondents' Motion for Summary Judgment, and states the following in support thereof:

1. The Respondents' argument in support of summary judgment fails on all grounds asserted, as described below in summary fashion and incorporating all the arguments and authorities as set forth in Petitioners' concurrently filed Brief in Support of Resistance to Respondents' Motion for Summary Judgment.
2. The *Blodgett* Line of cases does not control as to the meaning of "infamous crime."
3. Mrs. Griffin was not convicted of an "infamous crime."

4. Respondents' assertions about "logistical" difficulties are beyond the scope of this action and are unfounded.
5. Injunctive and mandamus relief are appropriate in this case and necessary to protect the Petitioner's right to vote and due process ensured by the Iowa Constitution.

WHEREFORE, the Petitioner respectfully asks this Court to deny the Respondents' Motion for Summary Judgment, and instead to recognize and protect her constitutional rights to vote and due process by granting summary judgment in her favor.

Respectfully submitted,

/s/Rita Bettis
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ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 29th day of June 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

/s/Rita Bettis

Signature of person making service.

By deposit in the U.S. mail:

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 PETITIONER'S BRIEF IN SUPPORT OF RESISTANCE TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Respondents' Motion for Summary Judgment should be denied because neither the *Chiodo* decision nor a textual and historical analysis of the Infamous Crimes Clause supports Respondents' position as to the meaning of the Clause. The Petitioner, Kelli Jo Griffin, has not been convicted of an infamous crime. Likewise, the Respondents' claims that a declaration by this Court recognizing Petitioner's right to vote in Iowa would lead to 'logistical difficulties' in other cases are beyond the scope of this action and unfounded. Finally, this Court has the authority to provide such supplemental injunctive and mandamus relief as necessary to protect the Petitioner's fundamental right to vote and due process rights.

II. ARGUMENT

1. The *Blodgett* Line of Cases Does Not Control as to The Meaning of Infamous Crime.

The Respondent contends that "the Court in *Chiodo* was at equipoise" on the issue of whether *Blodgett v. Clarke*, 159 N.W. 243 (Iowa 1916), should control the decision in *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014).[1] (Resp't Pate's

[1] All six justices involved in the *Chiodo* decision agree, and the Respondents acknowledge, that neither *Flannagan v. Jepsen*, 158 N.W. 641 (Iowa 1916), nor *State ex rel. Dean v. Haubrich*, 83 N.W.2d 451 (Iowa 1957), control the present case, because those cases only considered the definition of "infamous crime" within the context of the federal Constitution. *Chiodo*, 846 N.W.2d at 851 (Cady, C.J., plurality op.) ("This background reveals that we have never engaged in a textual analysis of the meaning of 'infamous crime' in article II, section 5 . . . and its surrounding context."). While the two justices writing the *Chiodo* concurrence argued that *Flannagan* and *Haubrich* remain good law, they did not dispute the plurality's understanding that both cases turned on

Br. in Supp. of Mot. for Summ. J., June 8, 2015 ("Resp'ts' Br."), at 8.) A close reading of *Chiodo* shows otherwise.

The *Chiodo* plurality explicitly concluded that *Blodgett* was clearly erroneous. *See Chiodo*, 846 N.W.2d at 852 (Cady, C.J., plurality op.) ("We conclude *Blodgett* was clearly erroneous and now overrule it."). And while the three opinions in *Chiodo* disagreed as to the exact parameters of the holding of *Blodgett*, a majority decidedly disapproved of *Blodgett*'s definition of "infamous crime." Indeed, on many issues central to the present case, there is majority agreement in *Chiodo*:

- Four justices (the three-justice plurality and the dissent) agree that the Court in *Blodgett* interpreted "infamous crime" as it is used in article II, section 5 of the Iowa Constitution to mean "any crime punishable by imprisonment in the penitentiary." *Chiodo*, 846 N.W.2d at 851-52 (Cady, C.J., plurality op.); *id.* at 863-64 (Wiggins, J., dissenting). Only Justice Wiggins, in dissent, adopted that definition as consistent with the Iowa Constitution. *See id.* (Wiggins, J., dissenting).[2]

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the definition of "infamous crime" within the context of the U.S. Constitution, and not on the meaning of that term within the Iowa Constitution. Respondents concede this point. (Resp't Pate's Br. in Supp. of Mot. for Summ. J., June 8, 2015 ("Resp'ts' Br.") at 6) ("The constitutional provision at issue in *Flannagan*, however, was the Fifth Amendment of the U.S. Constitution and not the Infamous Crime Clause of the Iowa Constitution. . . .The issue in [*Haubrich*] was not, however, the meaning of Iowa's Infamous Crime Clause.") Thus, the only remaining potentially relevant case is *Blodgett*.

[2] The concurrence, by contrast, would uphold *Blodgett* only as to its outcome on the question of whether felonies are disqualifying crimes for purposes of voting, but not as to its rationale. *Chiodo*, 846 N.W.2d at 861 (Mansfield, J., concurring specially) (determining that *Blodgett* remains 'good law' for the proposition that "felons cannot vote or hold elective office" but is not controlling on whether all crimes punishable by imprisonment in a penitentiary—aggravated misdemeanors—are disqualifying).

- Five justices (the plurality and the two-justice concurrence) agree that "infamous crime" as it is used in article II, section 5 of the Iowa Constitution does NOT mean "any crime punishable by confinement in prison," thus overruling *Blodgett* as it was interpreted by a majority of the Court. *Id.* at 852 (Cady, C.J., plurality op.); *id.* at 861 (Mansfield, J., concurring specially).

- Four justices (the plurality and the dissent) explicitly agree that the definition of "infamous crime" is a matter of constitutional interpretation for the courts, not the Iowa Legislature. *Id.* at 855 (Cady, C.J., plurality op.) (explaining that the drafters at Iowa's 1857 constitutional convention knew how to delegate authority over defining electors to the legislature and chose not to); *id.* at 864 (Wiggins, J., dissenting) ("I agree with the plurality that the legislature cannot write a constitutional definition of 'infamous crime' . . . . The legislature cannot disqualify a voter by defining 'infamous crime' under our constitutional scheme because the constitution defines who is and who is not an eligible elector.").

The prevailing rule of interpreting plurality decisions is, "when a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of [a majority of] Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *See, e.g.*, *Marks v. United States*, 430 U.S. 188, 193 (1977) (internal quotation marks omitted). The narrowest ground agreed upon in *Chiodo* is that the *nature* of the crime, not the potential punishment, determines whether a crime is infamous under article II, section 5 of the Iowa Constitution. *Chiodo*, 846 N.W.2d at 860 (Mansfield, J., concurring specially). Because *Chiodo* only considered if an aggravated misdemeanor could be an infamous crime, the Court did not expressly decide whether or not all felonies are "infamous." *Id.* at 851 (Cady, C.J., plurality op.); *id.* at 857 (Wiggins, J., dissenting).

Thus, the case at hand is one of first impression. It is up to this Court to determine whether delivery of 100 grams or less of cocaine, which is statutorily

classified as a felony, constitutes an infamous crime, and thus permanently disqualifies the Petitioner from participating in the democratic process. As a majority of justices on the Iowa Supreme Court have held, this is a constitutional, rather than statutory, determination. *See Chiodo*, 846 N.W.2d at 854-55 (Cady, C.J., plurality op.); *id.* at 864 (Wiggins, J., dissenting). Given that a four-justice majority (the plurality and the dissent) agreed that the legislature may not define the scope of the term "infamous crime," it is clear that an offense cannot be considered "infamous" based solely on whether the legislature statutorily classifies the offense as a felony.

"There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014) (Roberts, C.J., plurality op.); *see also Chiodo*, 846 N.W.2d at 848 (Cady, C.J., plurality op.). Because voting is the fundamental building block of political power, "[o]ther rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see also Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (Voting is a fundamental right, inherently "preservative of other basic civil and political rights."); *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978) (Voting is a fundamental right in Iowa.). Nowhere is judicial protection for constitutional rights in Iowa more important than in the voting arena, where legislative tinkering with the definition of "infamous crime" may exclude a class of electors from holding their legislators accountable through the legislative process. It is for this reason that "[t]he legislature may not add to or subtract from the voter qualifications under the

constitution." *Chiodo*, 846 N.W.2d at 852-53 (Cady, C.J., plurality op.) (citing *Coggeshall v. City of Des Moines*, 117 N.W. 309, 311 (Iowa 1908)). Because the legislature determines which crimes are classified as felonies under the Iowa Code, a decision holding that the term "infamous crime" is synonymous with "felony" would, in essence, grant the legislature ultimate authority over who can vote, and would leave this most essential right subject to its whims. Because the qualifications for voting are not subject to legislative determination, the scope of the term "infamous offense" cannot be coextensive with the list of crimes that, at any given time, the legislature happens to classify as a felony.[3]

Finally, in a footnote, the Respondents assert "the Petitioner is essentially arguing that a provision of the Iowa Constitution is unconstitutional." (Resp'ts' Br. at 5 n.1.) That argument reflects a basic misunderstanding of Petitioner's claim. As

[3] Such a result is incompatible with an analysis that defines infamous crime by the nature of the crime and not the length of its punishment. Examples demonstrating the arbitrary and untenable results when the line of who is permanently deprived from exercising their right to vote and who is not is drawn at what the legislature defines as a felony versus a misdemeanor can be found throughout the Code. A few of those include: (1) second offense OWI (as in *Chiodo)* in violation of Iowa Code § 321J.2(2)(b) (2015) but not third offense OWI in violation of Iowa Code § 321J.2(2)(c) (2015); (2) theft of a newer car in violation of Iowa Code § 714.2(2) (2015) but not theft of an older car in violation of Iowa Code § 714.2(3) (2015), based on the value of the car; or (3) exposing a sexual partner to a "reasonable possibility" of transmission of HIV where no transmission occurs in 2014 under the now-repealed Iowa Code § 709C.4 (2014) (violation is a class B felony); *Rhoades v. State*, 848 N.W.2d 22, 28 (Iowa 2014), but not engaging in the same activity in 2015 under Iowa Code § 709D.3(4) (2015) (violation is a serious misdemeanor). The fundamental right to vote cannot be preserved or lost based on such arbitrary, constitutionally irrelevant details.

expressly stated in her Amended Petition and Motion and Brief for Summary Judgment, the Petitioner makes two distinct claims arising under the Iowa Constitution. First, because the crime she was convicted of is not "infamous" under any constitutional test, the statutes, regulations, forms, and procedures that bar her from voting exceed legislative authority and unlawfully deny her right to vote under the Iowa Constitution. (Pet'r's Br. in Supp. of Mot. for Summ. J., June 8, 2015 ("Pet'r's Br.") at 1.) Second, her substantive due process rights under the Iowa Constitution have and are being violated, because the burden on her fundamental right to vote—consisting of the complete denial of her access to voter registration and the ballot box, the credible threat of serious criminal sanction should she vote, and the requirement that she undertake extensive paperwork, pay a fee, and wait, potentially through elections, to apply for a "restoration" of a right she never should have "lost" in the first place—fails strict scrutiny analysis. (*Id.*)

2. Mrs. Griffin Was Not Convicted of an Infamous Crime.

The Respondents argue that the Petitioner's crime is infamous, relying on cursory arguments already rejected by a majority of the justices in *Chiodo* (the plurality, joined in relevant portions by the dissent). First, the Respondents make the textual argument that a 2008 amendment to the Iowa Constitution, which replaced the word "idiot" with the words "person adjudged mentally incompetent to vote" amounted to a constitutional ratification of the 2008 Iowa legislature's definition of infamous crime as any crime categorized as a felony under either state or federal law. (Resp'ts' Br. at 9-

10.) This argument was unpersuasive to a majority of the Iowa Supreme Court in *Chiodo*. The plurality recognized that, "[w]ithout any question," the amendment was "technical and intended only to update the descriptions of mentally incompetent persons we no longer use." *Chiodo*, 846 N.W.2d at 854 n.3 (Cady, C.J., plurality op.) ("There was no intention to update the substantive meaning of the infamous crimes clause, and the companion judicial interpretations accordingly continued in force unaffected by the amendment."). Similarly dispensing with that argument, the dissent delved further into the legislative intent at the time of passage and ratification, and determined that "[t]here is no indication in the official legislative history that the legislature considered the clause of article II, section 5 dealing with infamous crimes when it proposed the amendment" examining the explanation to the House Joint Resolution of the proposed constitutional amendment. *Id.* at 864 n.10 (Wiggins, J., dissenting) (noting that H.J. Res. 5, 81st G.A., 2nd sess. (2006) "confirms my doubts" that the 2008 amendment considered the legislature's definition of infamous crime when the amendment passed). Rather, as simply put by the plurality, "the [2008] amendment did nothing but what it was intended to do: replace offensive descriptions of people with new descriptions." *Chiodo*, 846 N.W.2d at 854 n.3. The legislature and people of Iowa did not ratify a definition of all crimes defined as a felony under state law and all crimes classified as a felony by federal law.[4]

[4] Nor is the outcome of the *Chiodo* case logically consistent with the argument that the 2008 amendment ratified the legislature's statutory definition under Iowa Code

Respondents' next textual argument to support their assertion that "infamous crime" and "felony" have identical meaning is that the words "infamous crime" and "felony" are never used in the same *clause* of the Iowa Constitution, even though they are used in the same *article* and in close proximity to one another. (Resp'ts' Br. at 11.) Notably, Respondents cite no authority for this novel 'different clause' theory of textual interpretation. In fact, both terms are found in the same article very close to one another, in article II of the Iowa Constitution, entitled "Right of Suffrage." *See* Iowa Const. art. II, § 2 (privileging from arrest electors on days of election except in case of felony); Iowa Const. art. II, § 5 (disqualifying electors based on conviction of infamous crime). This proximity was cited by the plurality in *Chiodo* in finding that "[a] review of article II of our constitution reveals the framers clearly understood that an 'infamous crime' and a 'felony' had different meanings. . . . If the drafters intended the two concepts to be coextensive, different words would not have been used." 846 N.W.2d at 853.[5]

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§ 39.3(8), because that section included both felonies and aggravated misdemeanors, which are classified as felonies under federal law. In 2008, Iowa Code § 39.3(8) was widely understood to include aggravated misdemeanors. (*See, e.g.*, App. Ex. 5, Executive Order 42, Gov. Vilsack, 2005 ("Whereas, under the Constitution of the State of Iowa, an individual convicted of a felony or aggravated misdemeanor is denied the right to vote . . .")).

[5] The Respondents also cite *Richardson v. Ramirez*, 418 U.S. 24 (1974), for the proposition that states may disqualify from voting persons convicted of a felony without violating the Fourteenth Amendment to the U.S. Constitution. (Resp'ts' Br. at 11.) It is not clear what argument the Respondents are responding to. The Petitioner has not asserted a Fourteenth Amendment claim; rather, this action is brought under

Next, the Respondents engage in a cursory historical analysis, arguing that the framers must have defined infamous crime in accordance with the 1839 territorial code, which disqualified all persons convicted of rape, kidnapping, willful and corrupt perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy from voting. (Resp'ts' Br. at 10) (citing the State Laws of the Territory of Iowa, Code of Criminal Jurisprudence, Tenth Div., § 109, at 182 (1839).) This argument fails on three grounds.

First, as found by the plurality in *Chiodo*, with agreement from the dissent, any statutory definition of "infamous crime," whether enacted in 1939 or 2002, is not determinative of the constitutional question. *Chiodo*, 846 N.W.2d at 854-55 (Cady, C.J., plurality op.) ("Of course, like Iowa Code section 39.3(8) (2013) today, this statute is not a constitutional test. Moreover, the judgment captured by the statute in 1839 preceded our constitutional convention by nearly a generation, and it was repealed before 1851." (footnote and citations omitted)). This is because the legislature was specifically divested of the authority to define the qualifications of voters. *Id.* at 855 (Cady, C.J., plurality op.) ("More directly, it appears the drafters at our 1857 constitutional convention intended to deprive the legislature of the power to

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the Iowa Constitution. The fact that the U.S. Constitution permits felon disenfranchisement has no bearing whatsoever on Mrs. Griffin's claim that Iowa statutes, regulations, forms, and procedures that bar her from voting on the basis of a felony conviction violate her right to vote and substantive due process rights, as assured *by the Iowa Constitution*, because the Iowa Constitution disenfranchises only those convicted of infamous crimes, not all felonies.

define infamous crimes."); *see also id.* at 864 (Wiggins, J., dissenting) ("I agree with the plurality that . . . [t]he legislature cannot disqualify a voter by defining 'infamous crime' under our constitutional scheme because the constitution defines who is and who is not an eligible elector."). A *majority* of the justices—the plurality and the dissent—have already directly rejected the Respondents' argument, which ignores that the drafters were well-aware of the option of denying voting rights to all "persons declared infamous by act of the legislature" and chose not to adopt it. *See id.* at 855 (Cady, C.J., plurality op.) (drawing a contrast to Iowa Const. art. III, § 5 (1844), which employed such language).

Second, Respondents' argument that "there is no reason not to conclude that Iowa's Infamous Crime Clause was not intended as punitive," (Resp'ts' Br. at 12), also fails. Notably, Respondents do not provide any reason to conclude that the Clause was intended to be punitive. To the contrary, there *is* reason to conclude, as the plurality in *Chiodo* did, that Iowa's Infamous Crimes Clause was intended and understood to serve a regulatory purpose at the time of drafting. *Chiodo*, 846 N.W.2d at 855 (Cady, C.J., plurality op.); (Pet'r's Br. at 14-15) (citing *Snyder v. King*, 958 N.E.2d 764 (Ind. 2011) (finding that the Indiana Constitution's infamous crimes provision was a regulatory measure seeking to regulate suffrage and elections so as to preserve the integrity of elections and the democratic system)); 1818 Illinois Constitution (allowing disenfranchisement based on "bribery, perjury, or any other infamous crime"); 1820 Missouri Constitution (allowing disenfranchisement based on "electoral

bribery," "perjury, or any other infamous crime").[6] (*See* Pet'r's Br. at 29 for further discussion.) Thus, historical evidence points to the framers' understanding of infamous crimes as preservative of the integrity of democratic governance, supporting the Affront to Democratic Governance Standard. (*See* Pet'r's Br. at 26-28 (discussing 1838-39 territorial statutes as well as 1851 state laws that denominate some crimes as infamous that relate to preserving the integrity of the administration of justice and public office).)

Third, rather than supporting the Respondents' claim, the 1839 territorial code they cite, (Resp'ts' Br. at 10), supports the Petitioner's argument that the framers did not understand the terms "infamous crime" and "felony" to be coextensive. The 1839 territorial code classified several crimes as felonies, but, decidedly, did not include them among the list of infamous crimes disqualifying voters. *Compare* The Statute Laws of the Territory of Iowa, Code of Criminal Jurisprudence, Tenth Div., § 109, at 182 (1839), http://tinyurl.com/qgnf8fn ("Each and every person . . . convicted of the crime of rape, kidnapping, wilful [sic] and corrupt perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous."), *with id.* at 150-79 (including various 1839 felonies that were punishable by a term of more than a year's imprisonment, but were not included in

[6] Constitutional provisions drawn from Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, at 407 (Table A.7 Suffrage Exclusions for Criminal Offenses: 1790-1857, Revised Ed. 2009).

that list of infamous crimes: *e.g.*, manslaughter; attempt to poison; mayhem; false imprisonment; assisting person in jail to escape; libel; swindling; and selling lands a second time).[7] Thus, rather than supporting Respondents' argument that the framers intended the words "infamous crime" to be synonymous with all felonies, the 1839 territorial code supports the Petitioner's argument that those words carried distinct meaning to the framers, and specifically, that not all felonies are infamous crimes.

Last, the Respondents make a policy argument that the Court should find that Mrs. Griffin's crime is infamous because of an asserted difficulty in applying anything but a bright-line rule to determine which crimes are infamous. (Resp'ts' Br. at 13-14.) As an initial matter, the absence or presence of a bright line rule is not dispositive as to the meaning of the Constitution, which ultimately is what binds this Court. *See Chiodo*, 846 N.W.2d at 853 (Cady, C.J., plurality op.) ("The felony–misdemeanor distinction does offer a clean bright-line rule. The benefits of such a rule are obvious, and the allure is tempting. Yet, our role is to interpret our constitution. . . . If the words of the constitution do not support a bright-line rule, neither can we.") Ease of application does not justify a rule that disenfranchises eligible voters. In any event, Respondents are mistaken. As set forth in the Petitioner's Brief, there are at least three different bright-line standards that the court could employ, consistent with the *Chiodo*

[7] Respondents quip, "Not on the list? Election misconduct." (Resp'ts' Br. at 10.) Of course, neither are many other 1839 felonies, nor, pointedly, is delivery of 100 grams or less of cocaine, the crime at issue in this case, or any analogous offense.

plurality, to define the outer limit of infamous offenses. (*See generally* Pet'r's Br.) And while the Affront to Democratic Governance standard is most consistent with the text, purpose, and history of Iowa's Infamous Crimes Clause, (*see* Pet'r's Br. at 23-29), the Petitioner's conviction for delivery of 100 grams or less of cocaine falls outside any of the three standards posited by the *Chiodo* plurality, (Pet'r's Br. at 13-22).

3. Respondents' Assertions about "Logistical" Difficulties are Beyond the Scope of This Action and Are Unfounded.

Respondents next argue that this Court should refrain from ruling that the term "infamous crimes" excludes some felonies, because doing so would result in "logistical" problems. (Resp'ts' Br. at 14.) Notably, they do not cite any authority for the proposition that constitutional requirements can be set aside because of possible "logistical" problems. This Court cannot, as Respondents suggest, adopt a definition of infamy that is contrary to the Constitution simply to ease election administration. Nor can a court delegate the power to the legislature to establish new qualifications for voting that conflict with the Iowa Constitution itself, which would be the necessary result of Respondents' position that any crime classified by the legislature as a felony is "infamous." *Chiodo*, 846 N.W.2d at 852-53 (Cady, C.J., plurality op.) (citing *Coggeshall*, 117 N.W. at 311).

In any event, following the guidance of the majority of justices in *Chiodo* will not result in the parade of horribles envisioned by Respondents, for the three reasons. First, and most importantly, Mrs. Griffin's case does not raise the issue of incarcerated

citizens' eligibility to vote, and this Court need not rule on Respondents' hypotheticals. (*See* Resp'ts' Br. at 15.) Mrs. Griffin was never incarcerated for the conviction at issue in this case. She was given a suspended sentence and placed on probation on January 7, 2008, and did not serve any time in prison. (App. Exs. 3, 13.) She discharged her sentence of probation on January 7, 2013 (App. Ex. 15), prior to filing the current petition. Petitioner does not in this case claim that, had she been incarcerated, she could have voted while incarcerated. Whether citizens with a felony conviction can vote while incarcerated is not a claim before the court at this time. *See Feld v. Borkowski*, 790 N.W.2d 72, 78 n.4 (Iowa 2010) (a court should not decide an issue not raised by the parties or a claim not before it). The issue of whether or not there may be another basis for prohibiting voting by otherwise qualified electors during their term of incarceration is not presented in this case. *See State v. Iowa Dist. Ct. for Warren Cnty.*, 828 N.W.2d 607, 619 (Iowa 2013) (Appel, J., dissenting) (recognizing that lack of briefing and argumentation can lead to problems in the development of the law).

Second, had Mrs. Griffin raised the issue of voting while incarcerated, which she did not, Iowa law already provides clear, simple answers to Respondents' assortment of hypotheticals. The fact is, incarcerated Iowans already vote in some circumstances. In Iowa, eligible voters who are incarcerated pre-trial or who are serving an incarcerative sentence for a misdemeanor conviction may vote by absentee ballot. *See* Iowa Code § 53.2 (providing that any registered voter may submit a written

application for an absentee ballot); Iowa Code § 53.17 (providing that absentee ballots may be submitted by mail); *see also* Iowa Secretary of State, Auditors' Handbook (Mar. 2015), at 106, http://tinyurl.com/pobb4zy ("If you receive an absentee ballot request from a person who is in jail or prison, follow the usual procedures for mailing the ballot. You have no obligation to research the reason the person is incarcerated."). If a court were to determine that citizens serving an incarcerative sentence for a non-infamous felony conviction remain eligible to vote, and that there is no other legal prohibition against such individuals voting, then those electors could be treated in the same manner as other incarcerated eligible voters under the existent absentee balloting procedures. Auditor Fraise need not "establish a new polling station at the Iowa State Penitentiary" as Respondents suggest. (Resp'ts' Br. at 15.)

Respondents are similarly misinformed in their fear that "inmates would suddenly become a large voting bloc in several districts." (Resp'ts' Br. at 15.) Although incarcerated individuals are counted in the U.S. Census at their places of confinement, the Census's internal definition of residence does not define a state's legal definition of residence for voting purposes. Incarcerated Iowans who are eligible to vote continue to define their residence, for purposes of voting, according to the location of their pre-incarceration home. Iowa Code § 48A.5(2)(b) ("A person's residence, for voting purposes only, is the place which the person declares is the person's home with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time."); *see also State v. Savre*, 105 N.W. 387, 387 (Iowa 1905)

("The word 'residence' as employed in the election statutes is synonymous with 'home' or 'domicile,' and means a fixed or permanent abode or habitation to which the party, when absent, intends to return."). Protecting incarcerated citizens' voting rights would not redistribute political influence among districts, and would not create new voting blocs within districts, as Respondents fear.

Third, Respondents seek guidance on how the *Chiodo* test would apply to an assortment of felony convictions not at issue in this case, including election crimes, perjury, theft, murder, rape, and child molestation. (*See* Resp'ts' Br. at 14.) Petitioner sets forth in her brief the three standards of the nascent test outlined in *Chiodo* and demonstrates that none of the three applications of the test render her crime "infamous." (*See* Pet'r's Br. at 13-22.) Although it is unnecessary to address all of Respondents' hypotheticals, the various bright lines for defining "infamous crime" offered by the *Chiodo* plurality offer guidance as to how these other offenses could be treated for purposes of determining voter eligibility. Indeed, the Court can eliminate uncertainty about what effect, if any, a ruling in Petitioner's favor would have by adopting one of the three standards proposed in Petitioner's brief in support of summary judgment.

Courts in other states have made such determinations. For example, Respondents cite the Pennsylvania Supreme Court's interpretation of its state constitutional definition of "infamous crimes." (Resp'ts' Br. at 14) (quoting *Commonwealth ex rel. Corbett v. Griffin*, 946 A.2d 668 (Pa. 2008).) In *Griffin*, the

Pennsylvania Supreme Court determined that, based on an 1842 decision interpreting Article II, section 7 of the Pennsylvania Constitution, either a felony conviction or *crimen falsi* offense was a constitutionally infamous crime that rendered a person ineligible to hold office.[8] *See* 946 A.2d at 673-74 (citing *Commonwealth v. Shaver*, 3 Watts & Serg. 338, 1842 WL 4918 (Pa. 1842). *Griffin* was distinguished three years later by *Commonwealth ex rel. Kearney v. Rambler*, 32 A.3d 658, 665 (Pa. 2011), establishing that there is no bright-line rule for determining whether an "extra-jurisdictional" federal felony constitutes an infamous crime. The court in *Rambler* rejected a rule that would have rendered a federal felony an "infamous crime" based on the federal definition, and instructed reviewing courts to make a case-by-case assessment of extra-jurisdictional felonies by looking at the nature of the offense and the underlying conduct. *Id.* Pennsylvania courts ably apply the *crimen falsi* standard articulated in *Griffin* and the moral turpitude standard outlined in *Rambler* to determine whether a crime meets the state constitutional definition of "infamy." Iowa courts could similarly apply a judicial interpretation of "infamous crimes" that is not dependent on the legislature's definition of "felony."

[8] Pennsylvania citizens disenfranchised due to a felony conviction automatically regain their right to vote upon release from prison. *See Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Commw. Ct. 2000), *aff'd*, 783 A.2d 763 (Pa. 2001) (per curiam).

4. Injunctive and Mandamus Relief are Appropriate in this Case.

The Respondents assert that supplemental injunctive and mandamus relief are not necessary to protect Mrs. Griffin's right to vote and substantive due process rights. (Resp'ts' Br. at 16-17.) However, the supplemental injunctive and mandamus relief the Petitioner seeks are entirely within the province of this Court and necessary to protect the Petitioner's interests. *See* Iowa R. Civ. P. 1.1102 ("Any person . . . whose rights, status or other legal relations are affected by any statute, . . . rule, [or] regulation . . . may have any question of the construction or validity thereof or arising thereunder determined, and obtain a declaration of rights, status, or legal relations thereunder.") Supplemental relief is expressly provided for in the Iowa Rules of Civil Procedure. *See* Iowa R. Civ. P. 1.1106 ("Supplemental relief based on a declaratory judgment may be granted wherever necessary or proper."). The Petitioner properly seeks such a declaration construing the validity of the statutes, rules, forms, and procedures which bar her from registering to vote and voting, as well as such supplemental equitable relief as necessary to secure those rights.

Mandamus is the type of equitable action brought to compel an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. Iowa Code §§ 661.1, 661.3 (2015). The Respondents admit that if the Petitioner was not convicted of an "infamous crime," she is otherwise eligible to register to vote and vote. (Stipulated Joint Statement of Undisputed Facts, May 15, 2015, at ¶ 24.) Here, Petitioner asserts that, because she was not convicted of an

infamous crime, and because she is otherwise eligible, the Respondents have a duty to allow Mrs. Griffin to vote. Both her underlying right to vote and her substantive due process rights preexist this suit even though the Respondents have barred the Petitioner from exercising those rights. Moreover, the Iowa Code only requires that a legal right to damages already be complete at the commencement of the action when the duty sought to be enforced by mandamus "is *not* one resulting from an office, trust, or station." Iowa Code § 661.6 (2015) (emphasis added). Here, an injunction to protect Mrs. Griffin's right to vote and due process rights is also necessary and appropriate. In her case, the deprivation of her right to vote is ongoing. And Mrs. Griffin has clearly established a credible fear of sanction for voting. (*See* Pet'r's Br. at 6) (detailing Respondents' prior prosecution of Petitioner for voting.)

Perplexingly, the Respondents state that "even assuming Griffin's rights as an elector are established by a future declaratory order, she would need to register to vote before either Secretary Pate or Auditor Fraise had a duty to act." (Resp'ts' Br. at 17.) The voter registration form itself wrongly requires the Petitioner to swear, under penalty of perjury, that she has not been convicted of a felony or has had her right to vote restored following a felony in order to register, rather than an infamous crime. The Respondents' statement is deeply troubling since the Petitioner cannot register to vote but for the performance of duties by the Respondents to accept and process her voter registration form. Iowa Code § 47.7 (2015) (duties of Secretary of State to prepare, preserve, and maintain voter registration records and maintain single,

computerized statewide voter registration file; duty of county auditor to conduct voter registration and elections). (Stipulated Joint Statement of Undisputed Facts, at ¶¶ 2-5.) The statement is also on its own indicative of the need for this Court to make the duty owed by the Respondents to the Petitioner clear and express by granting mandamus relief, which is simply an order for the Respondents to comply with their duty to allow the Petitioner to register and vote, and to count her ballot if validly cast.

Without an order of this Court requiring Respondents to allow the Petitioner to register to vote and vote once registered, *despite* Iowa statutes, rules, procedures, and forms to the contrary, the Petitioner has no basis to believe she would not continue to be barred by Respondents from exercising her constitutional rights, much less that she would be protected from criminal liability for doing so. Thus, the Petitioner rightly and reasonably seeks assurance and protection by the Court that she will be able to vote, and that the state will be enjoined from bringing criminal charges as a result of her casting a ballot consistent with her constitutional rights, but inconsistent with Respondents' current policy.

Finally, the Respondents assert that the state is not a named party to the suit and therefore the court cannot enjoin the state from further wrongful criminal prosecution of Mrs. Griffin for registering to vote and voting without first obtaining a "restoration" of the right to vote by the Iowa Governor. (Resp'ts' Br. at 17.) The Respondents cite no authority for this assertion. Petitioner need not redundantly name the state of Iowa when she names state officials in their official capacity. When

officials are named in their official capacity, they represent the State of Iowa as the "real party in interest." *See, e.g., Kentucky v. Graham*, 473 U.S. 159, 166 (1985); Iowa R. Civ. P. 1.201 ("Every action must be prosecuted in the name of the real party in interest."); *see also* Iowa R. Civ. P. 1.207 (Actions by and against state: "The state may sue in the same way as an individual."). Indeed, that proposition underpins the necessity of naming officials in their individual capacity in claims for damages brought under 42 U.S.C. § 1983 for violations of U.S. constitutional rights: state officials, standing in the place of the state, possess sovereign immunity when named in their official capacity under the Eleventh Amendment, unless the state has waived its immunity. *See Chiavetta v. Iowa Bd. of Nursing*, 595 N.W.2d 799, 801 (Iowa 1999) (citing *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989)); *Hafer v. Melo*, 502 U.S. 21, 25-26 (1991). By contrast, when a state official is named in his official capacity for purposes of injunctive relief, the state, not just the official named, is enjoined by a successful outcome. *See Graham*, 473 U.S. at 165-66 ("Official-capacity suits, in contrast, 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" (quoting *Monell v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is *not* a suit against the official personally, for the real party in interest is the entity." *Graham*, 473 U.S. at 166 (citation omitted).

The Iowa Rules governing this suit for declaratory and other supplemental equitable relief are clear that "'person' shall include any individual or entity capable of suing or being sued under the laws of Iowa." Iowa R. Civ. P. 1.1109. Thus, the named Respondents, in their official capacities, representing the state of Iowa, are appropriately named 'persons' subject to such equitable relief as the court deems "necessary and proper" to secure rights of the Petitioner.

III. CONCLUSION

For the foregoing reasons and those contained in her Brief in Support of her Motion for Summary Judgment, Petitioner respectfully asks that this Court deny the Respondents' Motion for Summary Judgment, grant summary judgment in favor of the Petitioner, and order such supplemental relief as necessary to secure her constitutional right to vote and due process rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 29th day of June 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. PAUL PATE, in his official capacity as the Iowa Secretary of State and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa, Respondents.	No. EQCE077368 **RESPONDENT PATE'S RESISTANCE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Iowa Secretary of State Paul Pate, resists Petitioner's Motion for Summary Judgment, and in support thereof respectfully states:

For the same reasons set forth in the Secretary's Motion for Summary Judgment, Petitioner is not entitled to judgment in her favor. In addition:

I. The Statutory Definition of Infamous Crime is Entitled to a Presumption of Constitutionality.

Petitioner presents her argument as a pure constitutional challenge. In doing so she ignores the legal significance of the statutory definition of infamous crime. Contrary to Petitioner's assertions, the statutory definition of infamous crime is not *per se* invalid. Article II of the Iowa Constitution proscribes both the floor and the ceiling of the right to suffrage. As a result, the legislature cannot either grant more people the right to vote or deny more people the right to vote than the Iowa Constitution permits. Nothing, however, prevents the legislature from enacting laws and definitions that fall within the constitutional framework. That is precisely what the legislature has done here, enacting a Goldilocks statute that serves only to clarify—not expand or retract—the rights of an elector.

Petitioner presents three possible definitions or tests for infamous crime. The mere existence of alternative definitions does not make the test employed by the legislature invalid. At best the text and the history of the Infamous Crime Clause is ambiguous. As the fractured court in *Chiodo* demonstrated, there is evidence to support several conflicting definitions of the clause. If this were an issue of first impression, perhaps the definition suggested by the Petitioner constitutes the best policy. This is not, however, an issue of first impression. The Iowa legislature has made a choice—defining infamous crime as felony. Like all statutes, Iowa Code section 39.3(8) is entitled to a presumption of constitutionality. *State v. Thompson*, 836 N.W.2d 470, 483 (Iowa 2013); Iowa Code § 4.4(1) (2013). On this ambiguous record, Petitioner has not shown that this definition, this choice is unconstitutional beyond a reasonable doubt. *Id.*

II. Infamous Crime is an Evolving Standard.

All parties agree that the concept of infamous crime is not static. What constitutes infamy for elector purposes can and must evolve of time. Nevertheless, Petitioner wholly ignores the current expression of infamy in the Iowa Code. This statutory provision is the best reflection of the contemporary definition of infamy. That understanding, moreover, was ratified by the voters of this state in 2008 when Article II, section 5 was amended. As a result, it is the 2008 Infamous Crime Clause and not the 1857 Infamous Crime Clause at issue in this case.

Instead of giving import or deference to this modern understanding of infamy, the Petitioner focuses on early nineteenth century statutory and constitutional definitions of infamy. Petitioner attempts to read the tealeaves to conclude that infamous crimes in 1857 were crimes that were an "affront to democratic governance." The same crimes that

constituted an "affront to democratic governance" in 1857—bribery, perjury, forgery, etc.—are the same crimes that would constitute an "affront to democratic governance" today. Rather than evolve with society, Petitioner is asking this court to adopt a definition of infamous crimes frozen in the mid-nineteenth century.

If you acknowledge, as Petitioner does, that the concept of infamy is constantly evolving, search for an 1857 definition of infamy is self-defeating. The constitutional provision is purposefully ambiguous to allow contemporary norms to govern.[1] By defining infamous crime as felonies, the contemporary Iowa legislature has determined that some crimes—either due to their nature or their seriousness—reveal that the perpetrator has so defied societal norms so as to forfeit his/her right to participate in the democratic process. This determination is wholly consistent with the Infamous Crime Clause.

WHEREFORE Respondent Pate respectfully prays that this court deny Petitioner's Motion for Summary Judgment. Respondent Pate requests such further relief as may be just and equitable under the circumstances.

[1] None of which is to say there is not some limitation on the legislature's ability to define infamous crime. One can certainly imagine a parade of horribles where the legislature could define all crimes as felonies or change the statutory definition of infamous crimes to include misdemeanors. Neither of those scenarios is presented here.

Respectfully submitted,

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Proof of Service

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on the 29th day of June, 2015.

_X_ U.S. Mail	___FAX
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___ Federal Express	___Other
___ E-mail	_X_ Electronically – EDMS System

Signature: /s/ Lisa Wittmus

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 PETITIONER'S REPLY TO RESPONDENTS' RESISTANCE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Petitioner Kelli Jo Griffin, by and through her attorneys, and in this Reply to the Respondents' Resistance, respectfully asks this Court to grant her Motion for Summary Judgment, and states the following in support thereof:

1. **Iowa's Statutes, Regulations, Forms, and Procedures Barring All Persons Convicted of Any Felony From Registering to Vote and Voting are Unconstitutional Beyond a Reasonable Doubt.**

The Petitioner has established that the statutes, regulations, forms, and procedures which bar all persons convicted of any felony from eligibility to register to vote and vote are unconstitutional beyond a reasonable doubt—both broadly, because the definition of infamous crime is not coextensive with felony, (Pet'r's Br. in Supp. of Summ. J. at 7-12); and as applied, because Mrs. Griffin was not convicted of an

infamous crime (Pet'r's Br. in Supp. of Summ. J. at 13-22). As such, they must be struck down so as to protect the voting and due process rights of Mrs. Griffin.

Respondents' position in this case boils down to a single proposition: that Mrs. Griffin's offense is an "infamous crime" and therefore disqualifies her from voting, based only on the fact that her offense has been statutorily designated by the legislature as a felony. But notably, the Respondents do not dispute in their Resistance that the legislature lacks constitutional authority to modify the qualifications for voting as set forth in the Iowa Constitution, (Resp'ts' Resistance at 1-3), which means that the legislature does not have the authority to define what is and is not an infamous crime. (*See* Pet'r's Br. in Supp. of Summ. J. at 9; Pet'r's Resistance Br. at 9-10; Resp'ts' Resistance at 1-3). Indeed, the Respondents concede this point in their Resistance. (*See* Resp'ts' Resistance at 3 n.1) ("None of which is to say that there is not some limitation on the legislature's ability to define infamous crime.") That concession is fatal to Respondents' position that the term "infamous crime" changes to "reflect[]" whatever crime the legislature decides at any given time to designate as a felony. (Resp'ts' Resistance at 2). Respondents' position, asking this Court to treat "infamous crime" as co-extensive with "felony," would, contrary to the holdings of a majority of the Iowa Supreme Court in *Chiodo*, grant the legislature ultimate authority to modify the qualifications for voting by redefining the scope of the term "infamous crime." Instead, once the Respondents accept that the legislature is not authorized to define infamous crime more broadly than the Iowa Constitution, it follows that the

legislature cannot disqualify voters based simply on its ever-changing statutory designations of crimes as felonies.

Given that the definition of the term "infamous crime" cannot be founded in the statutory determinations of the legislature, it must derive from the Iowa Constitution itself. The *Chiodo* plurality opinion sets forth three possible definitions of that term based on the text and history of the Constitution (*i.e.*, crimes that are an affront to democratic governance; *crimen falsi*; and crimes of moral turpitude), and, critically, the Respondents do not dispute in their Resistance that Mrs. Griffin's offense is not infamous under any of those three standards. (Resp'ts' Resistance at 1-3.) Nor have Respondents refuted the application of the law to the Petitioner in light of her constitutional claims—that if Mrs. Griffin's crime is not infamous, the statutes, regulations, forms, and procedures that bar all persons convicted of any felony from eligibility to register to vote and vote are unconstitutional as a violation of her state constitutional rights to vote and to due process. (*Id.*)

Indeed, once it is established that "infamous crime" as used in Article II is not co-extensive with the word "felony," all of the statutes, regulations, forms, and procedures which bar all persons convicted of any felony from eligibility to register to vote and vote are unconstitutional beyond a reasonable doubt. Moreover, those statutes, regulations, forms, and procedures are unconstitutional as applied to Mrs. Griffin specifically, because her crime, delivery of 100 grams or less of cocaine, fails

every iteration of the nascent infamous crimes test consistent with Article II's regulatory purpose. (*See* Pet'r's Br. in Supp. of Summ. J. at 13-22.)

2. The Constitutional Meaning of Infamous Crime to Disqualify Voters is Not Subject to Legislative Control, and Thus is Not "Evolving" as the Respondent Uses that Term, Meaning Disqualifying an Ever-Growing Number of Voters.

Although in their Summary Judgment Brief the Respondents argue that the definition of infamous crime must be subject to a bright-line test, they now argue the opposite in their Resistance to the Petitioner's Motion for Summary Judgment: that the constitutional definition of infamous crime is an evolving standard. (Resp'ts' Resistance at 2-3.) By this, the Respondents seemingly mean that it is a *devolving* standard—disqualifying an ever-increasing class of voters since the 1857 Constitution, according to the whims of the legislature. Notably, Respondents cite no authority for that proposition.

Moreover, contrary to the assertion by the Respondents, the Petitioner does not concede that the definition of "infamous crimes" is evolving, and has not asserted as much in this action. (*See generally* First Am. Pet. for Declaratory J., Feb. 26, 2015; Pet'r's Br. in Supp. of Summ. J.; Pet'r's Resistance Br.) (all arguing the unconstitutionality of the disenfranchisement of Mrs. Griffin according to an objective constitutional test.)

As an alternative to the evolving standard theory, the Respondents cite the 2008 Constitutional Amendment for the proposition that the legislative definition of

infamous crime in place at that time, disqualifying all persons convicted of a crime classified as a felony under state or federal law, was thereby ratified and made constitutional law. (Resp'ts' Resistance at 2.) However, as argued by the Petitioner in her Resistance Brief, a majority of the Justices of the Iowa Supreme Court in *Chiodo* rejected that position, holding that the 2008 technical amendment to the Constitution, cited by the Respondents, had one purpose and one function: to modernize the formerly offensive language describing persons adjudged as incompetent to vote. (*See* Pet'r's Resistance Br. at 6-7). It was not in any way a referendum on the infamous crimes clause. (*Id.*) Moreover, the outcome of the *Chiodo* decision itself refutes this point. *Chiodo* held that people convicted of aggravated misdemeanors are not disqualified from voting by Article II, even though aggravated misdemeanors are treated as felonies under federal law, and were considered disqualifying offenses under the 2008 Iowa statutory definition of infamous crime. (Pet'r's Resistance Br. at 7 n.4.)

To the extent that the constitutional definition of "infamous crime" might, *arguendo*, evolve—and there is no authority for this novel argument—it must of course evolve within the framework instituted by the founders of the 1857 Constitution, consistently with Article II's regulatory purpose and without diminishing constitutional rights. That is, even if the scope of "infamous crimes" evolves, there is no support for the notion that it must "evolve" in the manner dictated by the legislature. Indeed, as explained above, the legislature may not—as it has done here—define infamous crimes more broadly than the Iowa Constitution, because doing so

violates the rights of all Iowans convicted of non-infamous felony crimes, who are entitled to vote under the Iowa Constitution. The "evolving" standard as envisioned by Respondents would make the permanent disenfranchisement of an Iowa voter on account of conviction of a felony crime entirely subject to legislative whims. That result is inconsistent with the finding of a majority of the Court in *Chiodo* that the legislature lacks this power. (*See* Pet'r's Br. in Supp. of Summ. J. at 9; Pet'r's Resistance Br. at 9-10). Rather, the concept of infamous crime is grounded in one of the three objective tests that the *Chiodo* plurality has set forth in its opinion and limited by Article II's regulatory purpose.

WHEREFORE, the Petitioner respectfully asks this Court to protect her constitutional rights to vote and due process by granting summary judgment in her favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, v. PAUL PATE, in his official capacity as the Iowa Secretary of State and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa, Respondents.	No. EQCE077368 **RESPONDENTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

COME NOW, Respondents, by and through their undersigned counsel and respectfully submit the following supplemental authority referenced during today's summary judgement hearing: *Carter v. Cavenaugh*, 1 Greene 171, 1848 WL 195 (Iowa 1848) and *Palmer v. Cedar Rapids & M.C.Ry. Co.*, 113 Iowa 442, 85 N.W. 756 (Iowa 1901). Copies of the cases are attached.

Respectfully submitted,

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/s/ Jeffrey S. Thompson

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Proof of Service

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on the 6th day of August, 2015.

_X_ U.S. Mail	___FAX
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___ E-mail	_X_ Electronically – EDMS System

Signature: /s/ Lisa Wittmus

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN,	:	
Petitioner,	:	EQCE077368
v.	:	
PAUL PATE, as his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa,	:	TRANSCRIPT OF MOTIONS FOR SUMMARY JUDGMENT (8-6-15)
Respondents.	:	

The above-entitled matter came on for hearing before the Honorable Arthur E. Gamble, Chief Judge, on August 6, 2015, at the Polk County Courthouse, Des Moines, Iowa.

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PROCEEDINGS

(The following took place in open court commencing at 8:20 a.m.)

THE COURT: So we have cross-motions for summary judgment in the matter of Kelli Jo Griffin vs. Paul Pate in his official capacity as the Iowa Secretary of State, and Denise Fraise in her official capacity as County Auditor of Lee County, Iowa, Polk County EQCE-077368.

I think the Respondents filed first; is that right?

MR. THOMPSON: We did. We were talking about -- and you may have a plan for how you -- we had kind of shotgunned it, per our agreement, but we were discussing and I told Rita, since they're really the Petitioner and the challenger here, that I have no objection if they go first and lay their case out, and I'll be prepared to respond and treat it that way. Keep it simpler than trying to do it two different ways, if that's okay with you.

THE COURT: Makes sense to me.

MS. BETTIS: Thank you. Good morning, Your Honor, counsel, and may it please the Court.

My name is Rita Bettis. This is my colleague, Julit Ebenstein, and we're representing Kelli Jo Griffin

in this action.

Kelli is a full-time mom. She is active in her community. She's a volunteer. And we're here because she wants to vote. And having endured the terrifying ordeal of facing a criminal prosecution that threatened to take her away from her kids for years as a result of having voted, we're here asking this Court to affirm and protect her fundamental most important right under the Iowa Constitution, her right to vote.

This case, of course, comes to the Court on cross-motions for summary judgment and the parties have stipulated to a set of undisputed facts. Chief among those is that but for Mrs. Griffin's conviction in 2008, for which she was sentenced to probation of a low-level, nonviolent drug distribution charge, she's qualified to vote under Iowa existing statutory scheme.

And so the legal issue in front of this Court at the heart of this case that we're asking Your Honor to resolve is actually very narrow, and that is whether Mrs. Griffin has been convicted of an infamous crime under Article II, Section 5 of the Iowa Constitution. Because if not, and she hasn't been, then the Iowa laws and regulations and voter registration form that bar her from exercising her fundamental right to vote are unconstitutional as applied to Mrs. Griffin.

This case, of course, follows the *Chiodo* decision from the Iowa Supreme Court last year. In *Chiodo* the crime at issue was not a felony offense. The crime at issue was an aggravated misdemeanor. But the court in *Chiodo* construed the Infamous Crimes Clause of the Iowa Constitution for the first time using an independent state constitutional analysis. And, of course, the opinion comes down as a plurality of special concurrence, agreeing with the plurality in some points and not all, and an assent. But there are major and important points on which a majority of the justices agree in construing the Infamous Crimes Clause of the Iowa Constitution and which provide precedent in this case when determining whether Mrs. Griffin has been convicted of an infamous crime.

So chief among those, first, is that the old standard that had been in place since 1916 in Iowa under the *Flannagan*, *Haubrich* and *Blodgett* line of cases no longer applied. Those were overruled. So it is not the case anymore that we can look to the classification of Mrs. Griffin's crimes, see that it's a felony or punishable by more than one year in prison, regardless of the amount of punishment actually sentenced, and decide she was convicted of an infamous crime. Instead, the majority of the court, the plurality and special

concurrence agreed it's the nature of the crime that determines whether or not it's infamous.

And the second point where you have a majority of the justices agreeing is that our Iowa legislature has been specifically divested by our Iowa Constitution of the ability to add to or subtract from the qualifications of voters by defining infamous crimes. And so the plurality holds this, and Justice Wiggins in the dissent specifically agrees with this point.

And the basis of that for the plurality and the dissent is that if you look to the 1844 Iowa -- draft of the Constitution, Iowa had three constitutional drafts, the first one in 1844 which did not result in Iowa becoming a state. It wasn't approved by Congress. The second was in 1846, and then, of course, the next was 1847 which is the constitution we're still operating under.

The 1844 draft specifically gave the Iowa legislature the ability to define infamous crimes for the purpose of excluding voters. And if you look at sister states, states like Indiana that were enacting constitutions around the same time as Iowa, Illinois, Missouri, and actually California, they all grant their legislature the ability to determine infamous crimes.

And so our court notes in the plurality, given

the radical, progressive voices that were speaking for the time in the 1846 constitution, it is not meaningless, it's very meaningful, that that is taken away from the legislature. And, instead, it is a unique and important feature of our Iowa Constitution that voters are protected from legislative tinkering.

So I will talk about the plurality decision now because that is the best guidance that this Court has, understanding that the old standard no longer applies, has been overruled, and that's the standard under *Blodgett* and *Haubrich* and the *Flannagan* case.

But before I do, I think it's important to emphasize that under those two points where we have majority agreement on the Supreme Court in *Chiodo*, it's constitutionally illogical, I should say, that the designation of a crime as a felony in and of itself, regardless of the nature of the crime, determines whether that crime is infamous or not, and I think there are some easy examples of that.

The best one is probably OWI second offense, because we know from the *Chiodo* decision that that's not an infamous crime, and we know it's not an infamous crime according to its nature. If the legislature designated OWI second offense as a felony in the 2016 legislative session as the very first act passed, that

would not change the nature of the crime and it would not make that crime infamous.

Similarly, there are states, Indiana, Oklahoma, New York, that classify OWI second offense as a felony, and just because that crime is classified as a felony does not mean that it's infamous because the Supreme Court has agreed by a majority that that crime by its nature is not infamous.

And I think it's also important, before I move on to the nascent test articulated by Chief Justice Cady in *Chiodo*, that Mrs. Griffin's underlying felony for a low-level drug distribution charge is in the ambit of crimes that is analogous to OWI second offense, primarily nonviolent low-level drug crimes, and related to substance abuse.

And so that area of crimes not only has no analog in the types of things which were criminalized in 1857 in the minds of our founders as crimes, much less infamous crimes, but they are markedly different from the types of offenses that we think of as most heinous, like crimes of violence, crimes that involve deceit, and crimes that threaten to undermine our system of government.

And so the plurality then embarks on the task of this independent state constitutional analysis of our

infamous crimes laws for the first time, and they identify what they call a nascent test, and I think that is largely a reflection of two things. No. 1, they were faced with an aggravated misdemeanor and so all crimes were not before them. Felonies, in particular, were not before them. And I think it's also a reflection of the fact that that case went up on extremely expedited review and really that test was very nascent. But I think that it is also the best guidance that we have for how this new concept of infamous crime is defined as applied to felonies.

And so the very first prong of this nascent test is that an infamous crime is one that is what the court calls particularly serious, and the plurality and special concurrence agree that that excludes, as a matter of course, all crimes designated as misdemeanors, but there is not a holding that that includes any felonies. That's not before the Court in either the plurality or the special concurrence.

However, the plurality also requires that in order for a crime to be an infamous crime, it has to have a specific criminal intent, and I think there are two ways to read that.

THE COURT: That would be a second element of the test?

MS. BETTIS: A second element.
THE COURT: Thank you.
MS. BETTIS: Right. And so a general intent crime is where you intend the action that is criminal, and a specific intent crime is where you intend the secondary result of that action.
So it's worth pointing out, of course, that Mrs. Griffin's crime is not a specific intent crime. But just to note for Your Honor in reading the plurality decision with a close reading, it's not clear whether the plurality means the specific criminal intent to be a facet of the particularly serious elements. In other words, it may be that what the plurality is saying is that crimes which have a specific criminal intent are particularly serious, and it may be that it's a third independent prong of the test. And so we have analyzed the test and applied it to Mrs. Griffin under either formulation.
And then second prong which is so important in light of Article II, Section 5, which is the Infamous Crimes Clause, is that the crime, in order to be an infamous crime, has to have a nexus to the purpose of Article II, Section 5, which is regulatory and not punitive. And so that means it has to have some relationship as a critical element to preserving the

integrity of our democratic system of government.
And so Mrs. Griffin's crime, of course, not only has no specific criminal intent, it's a general intent crime, but it's also not particularly serious. And while the sentence of the crime does not determine whether the crime is infamous or not, I think it's noteworthy that she was sentenced to probation and her crime is analogous to OWI second offense as a nonviolent drug offense. And then that --
THE COURT: It's a Class C felony?
MS. BETTIS: It's a Class C felony. And then last, of course, there's absolutely no relationship between these types of nonviolent drug offenses and the integrity of our democratic system or protecting the purity of the ballot box.
And so the court is able in *Chiodo* to say that OWI second offense is not an infamous crime under only that first prong, not being sufficiently serious, but it makes clear that all of those prongs have to be met in order for a crime to be infamous. Not only one. So if you're particularly serious, but there's no nexus to voting, it's not an infamous crime.
And so the court doesn't have in front of it a felony. It says at some point it will be -- when we have a felony in front of us, it will be prudent to

developing more precise tests. So they're acknowledging the difficulty of applying the test that they have articulated to crimes not in front of the court at that time. And they lay out three models that other states that disqualify classes of voters based on the type of crime committed use, and they lay out the universe of sort of options that were in the minds of the framers and the framers of other state constitutions in 1857 at the time, and then developing since.
And those three options are, first, what we call the Affront to Democratic Governance standard. That's the standard employed by the Indiana Supreme Court in *Snyder*, which the Iowa Supreme Court finds so instructive in *Chiodo*. And that standard is -- defined an infamous crime as it's very close to the way that the nascent test has articulated as any crime that has as a critical element an intent to subvert or undermine the integrity of our system of government. And so crimes that belong in that category are treason, perjury, serious election related offenses, corruption, acceptance of bribes, embezzlement of public money. And this is really the test that best comports with the history of the Iowa Constitution. I'll talk about that in just a second. But before I do, I'll just briefly explain what the other two standards are.

So the second standard that the court identifies is this crimen falsi standard. And the states that use that standard to disqualify classes of voters require -- they define infamous crime as a crime that has as an element an intent to deceive or defraud. And so the crimes that are included in that would include those crimes that we've talked about that are undermining to the integrity of our system of government, but also fraud and embezzlement -- that's private embezzlement as opposed to public -- and in most jurisdictions includes low level theft crimes.
And then finally the last model that states employ is the crimes of moral turpitude model to define infamous crimes, and this is by far the broadest category. It's also the most nebulous, the hardest to apply. But in general these are crimes which are most base, most vile, and which would include that first category, plus the second category crimen falsi, but also crimes involving elements of violence and sex crimes. And so the common thread there is what is referred to in the common law as an evil mind.
So the crime of moral turpitude standard is perhaps on a policy level, which is not a question before this Court, appealing in that it provides easy answers to include crimes like murder or sex crimes as

infamous crimes. But it's also the least likely to have been in the mind of our framers when envisioning our Infamous Crimes Clause in 1857 as a means to disqualify voters, and that's because while the concept of a crime of moral turpitude goes back in the common law and absolutely was a concept in the minds of our framers that's applied to the criminal code in 1857, the concept of a crime of moral turpitude as a means to exclude voters did not come into being until a full generation after the 1857 constitutional conventions, importantly only by southern states, only after the U.S. Civil War, and only with the express and clear purpose of disqualifying African Americans from voting. And at that time in Iowa in 1868 we are the very first state west of New England to grant African Americans the right to vote.

So it's antithetical to the purposes for which our framers came together and enacted our constitution that they had that concept in mind as applied to voting.

Similarly, although less dramatically, there's no textual or historical support that we could find upon a thorough review to support the crimen falsi standard. But there was a tremendous amount of reason to think that the Affront to Democratic Governance standard was the standard that the framers had in mind.

So, first, notably it's the only standard that comports with the regulatory purpose of Article II, as opposed to a punitive purpose. It's the only standard that squares with the pluralities nascent test to define infamous crime because it has that nexus to the purpose of preserving the purity of the ballot box and maintaining the integrity of our system of government. It also has historical support.

So because Iowa was on its -- was drafting its -- was on its third constitutional convention, but it was drafting its second constitution in 1857, Iowa was already a state by that time and we had a code in operation which provides, I think, some insight into the contemporary understanding of infamous crime. And the 1857 code defined three crimes as infamous, and those crimes were bribery of a public official, acceptance of bribes by a public official, and embezzlement of public money. Very clearly crimes that are an affront to democratic governance. Additionally, the constitutional debates themselves provide some insight.

So the Infamous Crimes Clause of Iowa's Constitution was adopted without debate in the 1857 constitutional conventions. But during the debates, remember, the issue of the day was slavery and our founders used the words "infamous crimes" throughout the

debates, and when they do so they're talking about -- I should say they use word "infamous", not "infamous crimes" -- and when they do they're talking about slavery and they're saying that slavery is infamous because it is antithetical to the functioning of our democratic system of government because it doesn't treat all men as equal under the law. So it's entirely consistent with the Affront to Democratic Governance standard of infamous crimes.

And the court in *Chiodo* doesn't say which of these applies, so we've provided extensive briefing for your Honor to be able to make a determination because this is a case of first impression.

THE COURT: I'm sorry to interrupt you.

MS. BETTIS: Oh, no. Please.

THE COURT: How broad, though, is the concept of an Affront to Democratic Governance? Some would say that the international trade of narcotics, including narcoterrorism, is a threat to the national security of the United States and an affront to democratic government, so much so that the drug cartels, in essence, promote anarchy.

So could you address the scope of the concept of affront to democratic government, and would it include narcotics distribution as kind of the -- to the

end users of international trade of narcotics, including cocaine?

MS. BETTIS: So the scope of the standard of affront to democratic government really requires that the crime as an element, one that is intended, subverts the democratic process, and the purity of the ballot box. And it is not the case that drug distribution was a crime in the mind of our framers in 1857 when they were writing the Infamous Crimes Clause, enacting it, and when we think that they had this standard in mind.

And so I think the answer to your question begs another question which, perhaps, the Respondent will raise in his argument, which is does the Infamous Crimes Clause evolve and change over time? And I think that the answer to that is that there is no indication that it does. There is no case law to support that idea. But to the extent that it might evolve analogous to the Eighth Amendment of the U.S. Constitution or Article I, Section 17 of the Iowa Constitution, which has very well developed case law regarding this evolving nature of those constitutional protections, it would evolve and not devolve.

So the constitutional rights that are set out in the constitution and protected, and remember our constitution uniquely protects voters from legislative

tinkering as a feature of the constitution, and that's something we have a majority of the justices agreeing with, it's hard to imagine that then the legislature could contract the rights under the constitution simply by creating new classes of crimes or by designating crimes as felonies. But I also think that it's the case that we don't have -- we don't have a holding that's binding on this court regarding that specific question.

I do think that the answer to that question, in light of the Affront to Democratic Government standard as we understand it, looking at the history of the constitution and at other states that use that test, that that would not be included.

So I think it's important to remember that Article II, as our court understands it, is regulatory. It regulates elections and voting broadly. It's not punitive. So if as a policy decision our legislature decides to criminalize certain behaviors, that is a separate inquiry from the constitutional right to vote where the government -- the legislature is specifically limited in what it can do to burden the rights of voters.

THE COURT: Sometimes advocates looking at the constitution from a progressive point of view might say that the constitution is a living, breathing document

that evolves along the times and is not limited to the original intent of the framers in 1857.

MS. BETTIS: Uh-huh.

THE COURT: And if we were to adopt that point of view, are you -- putting the original intent thing aside, are you saying that a drug crime may be part of an international network of narcoterrorism that might threaten the national security of the United States, but that crime, in and of itself, is not the type of crime that subverts the democratic process or the right to vote?

MS. BETTIS: That is what we would argue, Your Honor. And I think that that progressive idea of a constitution as a living, breathing document is consistent with the Affront to Democratic Government standard.

So when we think of the constitution as a living, breathing document that evolves -- we think of it as evolving to expand the protections that individual citizens have. It doesn't devolve to contract those rights which are already established under the constitution. That those are entirely different things. And that allowing the legislature the authority to expand those crimes which is disqualifying the crime that is infamous is that latter and not the former of a

living, breathing, progressive constitutional document.

And so under any of these standards which the court identifies in *Chiodo*, the Affront to Democratic Governance standard which we have already talked about, Mrs. Griffin's crime, her low-level drug delivery crime, is not that it has no nexus to the integrity of our system of government or the purity of the ballot box as an element of the crime. Clearly, it's not a crimen falsi. There's no element of the crime that involves an intent to deceive or defraud.

And then finally, again, well the crime of moral turpitude standard is really antithetical to the history of our constitution. The court mentions that as an option and so we analyze it. But Mrs. Griffin's crime is not a crime of moral turpitude. It lacks that aspect of an evil mind and it has no element of a crime of violence, no element of an aspect of deceit or undermining our system of government.

And so for those reasons while this Court is faced with a case of first impression where it's required to construe the Infamous Crimes Clause using the precedent from *Chiodo* and apply that to a felony case for the first time. Under any of the standards that the Court identifies, Mrs. Griffin has not been convicted of an infamous crime, and so for that reason,

Your Honor, those statutes which limit her ability to vote based on her criminal conviction are unconstitutional as applied to her, and we respectfully request that Your Honor grant summary judgment in our favor.

THE COURT: All right. Thank you.

MR. THOMPSON: Thank you, Your Honor. Let me jump ahead and then I'll go back because I think you asked a question that cuts to the core of this because at some point we kind of appear to be playing slightly a semantic game about what is -- if we look at the first test, this Affront to Democratic Governance test, and I'm not saying it's the test that the Supreme Court adopted because, first of all, three justices can't adopt a test. We've got an interesting case and we will talk about *Chiodo* in a minute. But in referring to the Affront to Democratic Governance standard and kind of the *Snyder* approach to these things, what you hear from Petitioner's arguing that that affront or that -- I think the words that the plurality actually used in the nascent test is crimes that would tend to undermine the process. I mean, that's the word -- those are the words that they used. And that if you try to narrowly construe that as only crimes that involve the ballot box or forgery or perjury, I mean, that's kind of the path

we're going down. And you'll find, even if you do that, it becomes inconsistent with the common law of the history of the constitution.

But your question goes kind of to the bigger issue which is exactly what did the framers of the constitution and those who have interpreted that over the years view as crimes that indicated something about a person that meant that they were a suspect, that they should not be trusted with a ballot. Just like they should not be trusted as witnesses at common law or trusted to hold public office.

And so the breadth of that is really the question of when we ask about what does infamous crime mean and what did it mean to people who drafted the constitution and those who interpreted it back at the outset of the Iowa republic, I think you're going to find that it evolves from the common law, and the whole concept of infamous crimes evolves from the idea that there are certain crimes that somebody commits that says something about that person, that means that that person, you know, would be incompetent to be a witness, should not be trusted to cast a vote, and that that very sense of -- it was a moral issue back then, but it's a sense of untrustworthiness that led the framers and others to conclude that people convicted of certain

types of crimes should not be entrusted with what we agree is one of the most fundamental rights in democracy is to vote.

THE COURT: When you talk about it evolving from the common law, and we're back in 1857, I guess, how far back into the common law are we talking about? Are you talking about English common law?

MR. THOMPSON: Well, I mean, if you look at some of the cases -- if you look at really the *Chiodo* plurality, if you look at the *Snyder* case, really if you look at the *Flannagan* case and the U.S. Supreme Court *Wilson* that was cited, it talks about common law, but what they start to talk about is two approaches that evolved from the common law. And so I think that the common law that matters to us today for this question is, you know, what did people in the state of Iowa, both people who framed the constitution and those justices that first interpreted the constitution, mean when they said infamous crime.

And I think when we look to -- and the briefing is full of it -- but we have things like the 1839 territorial law that lists those things that would cause somebody to be judged incompetent to vote and to hold office, and that list is -- really kind of repeats the common law list.

Actually, one of the best cases, unfortunately, is not even cited in all the briefing, and it's a case called *Carter v. Cavanaugh*. It's a case decided by the Iowa Supreme Court in 1848. So it was decided between the 1846 constitution and the constitution that -- the 1848 and then -- upon which the 1857 constitution was based. And these cases deal mostly with the competency of witnesses to give testimony. That's the line of cases from which all this derives.

And back in 1848 the Iowa Supreme Court said in the context of a challenge to somebody's competency as a witness that, "But when a witness has been legally and finally adjudged guilty of an infamous crime, he is rendered incompetent unless rehabilitated by pardon. Such infamy results not only from the heinous crimes class, as treason, felony and crimen falsi, as understood in common law." And this is why, you know, that some of the *Chiodo* discussion, I mean, back in 1848 the Iowa Supreme Court says, "Formally the punishment was considered the cause of infamy, but now it appears settled that the infamy arises from the enormity of the crime."

So infamous crime in 1848 meant, among other things, felony. It's there, it's clear, and it's

consistent with the territorial law that's in the briefing from 1839 that doesn't use the word "felony", but lists everything that would be a felony. But, actually, when you look at the territorial law and this case, the meaning is actually broader than felony. But, certainly, if it's a felony, it's on the list. And so -- and the reason for, again, a common law and in the minds of the framers and in the minds of the legislature in 1994 when they passed the statutory definition, that that type of conviction did tend to undermine integrity of our system of government is because of what it said about the person who was convicted of that type of crime. And it's a broad list.

Another point that I want to talk about real briefly before I go back in time is the idea of evolution. I mean, Petitioner's happy to concede that the idea, the norms have to evolve because, you know, sitting here in Iowa we have a statute from 1939 that includes sodomy and calls it a crime against nature and treats it as an infamous crime. So the Iowa Supreme Court has already dealt with some of those issues. We have bigamy and sodomy on the list.

And so the question is -- in this court in this case is a narrower one that I think we've been talking about or hearing about this morning, which is we

have an individual who's been convicted of a Class C felony, delivery of cocaine, 2008. The constitution says if you're convicted of an infamous crime, you're incompetent. You're disqualified from voting. The legislature has put in place a statutory scheme that says essentially that that means any felony. And what is before you is a challenge to that statutory scheme, and that in arguing that this particular felony, a Class C felony for delivery of cocaine, can't be an infamous crime.

THE COURT: So OWI second offense is not an infamous crime --

MR. THOMPSON: Correct.

THE COURT: -- because it's not a felony. But OWI third offense is an infamous crime because it is a felony.

MR. THOMPSON: Correct.

THE COURT: And the only difference in the nature of the two crimes is the number of times that it was committed within the time period of provided by law.

MR. THOMPSON: Correct.

THE COURT: And neither one of them have anything to do with the integrity of the voting system.

MR. THOMPSON: Well, I mean, that's where I think I disagree is that, no, it's not about voting, but

the third time you're intoxicated behind the wheel and endangering your community and your public and yourself, that the legislature has decided that that says something about your character, that your disregard for the safety, for the law, for whatever, that warrants an upgrade to the status of a felony. It's a matter of degree. That that's more serious, more in affront of the order of public safety and your duties as a citizen than having only done it twice.

And we've said in our brief, I mean, the reality is that any crime today is a statutory animal. In other words, we go back to common law and there were certain common law crimes. But even before our constitution was put in place, there became statutory crimes. The legislature started to define elements of crimes and crimes. So, by definition, when you refer to a crime, you can argue that the -- and we agree -- that the Court gets to interpret the meaning of a word in the constitution, but where there's a reference to crime, by definition, the legislature plays a role because crime, by definition, a law is passed by the legislature. So there's an inescapable interaction here, and, in part, I think, reflects the need for this to evolve over time.

The *In Re Wilson* case, which *Flannagan* cited, has a great passage where it talks about the fact that

these norms will and must evolve over time.

And so that's -- and so on that issue, I mean, the *Chiodo* case didn't say the legislature can't have anything to do with this. We have four justices agreeing, but I think really stating the obvious, that when it comes to interpreting a word or phrase in the constitution, that's what the court gets to do. And so the charge of this Court and the charge of the Supreme Court ultimately is not to ignore the legislature. The legislature has really put into statutory form the handed down meaning of infamous crime and the only question is did they get it wrong. Not -- you know, you don't ignore it. And so there's a burden here.

I mean, this is a statute which with the presumption of validity and Petitioner challenges that statute and by -- really by offering all kinds of alternatives about other things that it could mean, but the question here is, is that clearly, beyond a reasonable doubt, an incorrect interpretation of the Iowa Constitution to say that if you're convicted of a felony, that's an infamous crime and you're disqualified from voting.

And so that high burden is something that we're losing here and that the Petitioner must show, must rule out other interpretations that would allow you

or the Supreme Court to uphold the statutory scheme.

So we agree that this Court must interpret the constitution, but this Court also isn't, I don't believe, working from a clean slate. If we work through the discussion of *Chiodo* that you just heard, I mean, the reality is most of what you heard was about a plurality decision that was signed on by three judges, and so the three votes are the ones that came up with this nascent test. You know, it's got to be serious. And what we have there is really four votes for the idea that the seriousness has to be at least a felony. That a felony -- you know, that a misdemeanor is not serious enough, which is really all the case ultimately decides. That OWI second, because it's not a felony, can't be an infamous crime.

If you read Justice Mansfield's special concurrence, he says, well, that's because really it's been understood since really the turn of the century to basically mean felony. And that's because as the criminal justice system evolved to really a binary system, that when the *Flannagan* court and *Blodgett* court and Haubrich court wrote their decisions when they said, you got to go to the penitentiary, it was really exactly the same. Substantively it's saying it's got to be a felony.

And so you've got three votes for this nascent test. You've got four votes that it needs to be the nature of the crime. But I just read you a quote from a case, an Iowa Supreme Court case from 1948 -- I'm sorry -- 1848 that says it's got to be the nature of the crime. And you've got four votes for the concept that it's got to be a felony. And that doesn't -- and as you pointed out, Your Honor, that an aggravated misdemeanor can't be infamous because it's not a felony -- therefore, it's not serious enough -- that is really the holding of the *Chiodo* case. The rest of it is interesting and educational, and the discussion of the three different standards, in particular, the discussion of this idea of regulatory versus punitive, Justice Mansfield takes that to task, frankly, as being inconsistent with not only Iowa law, but what the source from which they took it, which is the *Snyder* case.

And so if you look at the discussion in *Chiodo* and the three possible standards that they talk about, but don't adopt, one of the things that strikes me is the Petitioner kind of repeatedly jumps over, really, the details of the second test. So the first test that we discuss -- or that they discuss is the idea of just Affront to Governance test that really is derived from the *Snyder* approach, kind of this long -- and keeping in

mind that *Snyder* had a different constitutional provision and it was -- it had a different type of history and really was tied in facts specific to Indiana. But so the first test is Affront to Democratic Governance, the second one, which they refer to as crimen falsi, and then the third one, which is the moral turpitude.

I would argue that the Court -- this Court and the Supreme Court ultimately should focus on the second test, and -- because if you look at what the *Chiodo* court wrote, it says, "Other courts limit the definition to felony" -- I mean, that's the first word in this test -- "felony, a crimen falsi offense, or like offense involving charge of falsehood."

So it's virtually the same standard as I wrote -- or read you from the *Carter v. Cavanaugh* case in 1848 from the Iowa Supreme Court, and it includes felony. And that test, which is one of the tests talked about in *Chiodo*, a test consistent with the common law understanding of infamous crime in Iowa in 1848, is also a standard that, if applied, would be absolutely consistent with our statutory scheme. And as Justice Mansfield pointed out, I just mentioned, that would be consistent with this trio of Iowa cases, *Flannagan*, *Blodgett* and *Haubrich*, that talk about

punishment, but really in the context of a felony misdemeanor criminal world. And I think that's important that there is a way to harmonize all this consistent with a common law understanding of original intent of what infamous crime meant, with the Supreme Court's interpretation of that phrase early in Iowa history, consistent with the legislature's implementation of that understanding.

And then finally, and I think very significantly, and this is something Justice Mansfield focused on and Petitioners really don't want to talk about at all, and I don't think did this morning, is the constitution and the Article V -- or Article II, Section 5 provision that we're here to talk about and you're to interpret isn't the 1855 -- or '57 provision. That provision was specifically amended in 2008. It was amended by the legislature, it was ratified by the public, in the context of a statutory criminal scheme that -- as it exists today, which is different than the common law, the nature of criminal offenses has changed. But also, most importantly, in the context of the current framework of the election code that said infamous crime equals felony.

And in the context -- at the time there were a number of attorney general opinions pointing out the

issue that some aggravated misdemeanors you could go to the penitentiary, and there was this issue created by *Flannagan*, and, again, in that context, you know, infamous crime -- the words aren't changed to say only certain types of felonies or it says just infamous crime, and in the context of the statutory scheme it defines it as all felonies.

Justice Mansfield argues that that's a ratification, technically, and that at a minimum and I think even the plurality decision of -- the plurality opinion acknowledges that at a minimum you have to take that into account in trying to understand what the real meaning of infamous crime is under Iowa law.

The idea that -- and, again, Justice Mansfield points this out -- that three justices could overrule, you know, prior precedent is slightly problematic. In other words, I think other justices would say, well, guess what? You don't get to do that. You need a majority of vote to overrule a case. And as to the *Flannagan*, *Blodgett*, *Haubrich* line, they have three that say that's clearly erroneous, but they have Justice Mansfield that says, hey, and you can read those, you don't have to overrule those because you can read those as just meaning felony versus misdemeanor, which is consistent with the understanding of the time.

And as to that, there's actually another case that's *Wilson*, it's a 1901 case, that talks, again, about the common law evolution of disqualification and incompetency for witnesses in 1901 that comments that kind of the discussion of infamous crime as to the disqualification of witnesses for incompetency had kind of fallen to being only felonies by 1901.
And as you know that's where the Rules of Evidence ultimately went on character evidence as to impeachment.

THE COURT: Yeah, but that's not where they are now.

MR. THOMPSON: That's true.

THE COURT: Because now it's a crime punishable by death or imprisonment in excess of one year.

MR. THOMPSON: Which is a felony under Iowa law.

THE COURT: It's a felony under the evidence code.

MR. THOMPSON: Right.

THE COURT: It's not a felony under Iowa law.

MR. THOMPSON: Well, a year or more -- well, that's right.

THE COURT: It's not. That's a serious misdemeanor.

MR. THOMPSON: Correct.

THE COURT: And you can go to prison for an aggravated misdemeanor. So how do you -- what I'm struggling with and was leafing through the Rules of Evidence and glad you finally got to that point, that is how do you reconcile the evolution of the Rules of Evidence, for example, on competency of witnesses and impeachment for a crime of -- subject to imprisonment in excess of one year, like an aggravated misdemeanor? How do you reconcile that with this dichotomy of aggravated misdemeanors versus felony and OWI second versus OWI third?

MR. THOMPSON: Well, I think the answer is that this all started in the same place essentially as the common law, which is this idea of incompetency, that you were adjudged incompetent. It's kind of the moral equivalent of the mental incompetency piece of the constitution that disqualifies you from voting, and that as it evolved it evolved in different ways which is, I think that the Rules of Evidence as to impeachment evolved to the -- to a broader standard that was designed to -- because what you were doing is using impeachment of a witness, keep in mind, as opposed to the common law, you were just incompetent to testify.

THE COURT: Right.

MR. THOMPSON: They barred you. So this is just about evidence for impeachment and extrinsic evidence relating to impeachment. So, you know, what you're doing is a different thing. But I also think that even as to the witnesses, it was a total bar versus impeachment. But as we started looking at it in the context of voting, I think that, you know, because of the acknowledged fact that voting is a very important issue and there's a fundamental right at issue here, that the line ended up being drawn firmly at the felony level and it didn't push passed that.

But my point of the *Wilson* case is that at least they started essentially in the same place at the turn of the century, that even the witness test was -- had -- which has been much broader. Just like the infamous crime definition, at least in the *Cavanaugh* case in 1848, had been very broad, broader than felony, that by 1901 it was essentially as a witness, it was felonies only. And if you look at *Flannagan*, *Blodgett* and *Haubrich* because of the way the criminal code had developed for purposes of the voting statutes, the felony became the line, and, again, in the context of a constitutional challenge to a properly passed, enacted statute.

And so the question is if you've got an

interpretation where you can say, well, that is consistent with a reading of the Iowa Constitution and is not directly at odds with it, then I think you're obligated to follow an interpretation that can harmonize the statute with the original intent, if that's your goal as a reader of constitutions. You're not obligated to go to the original intent. Some judges believe they are. But you can harmonize the original intent, the original understanding of infamous crime and the prior case law.

We've got this line of cases, *Cavanaugh*, *Wilson*, *Blodgett*, *Flannagan* and *Haubrich*, that you can read as drawing a line in the sand between felony and misdemeanor that's consistent with everything and, therefore, this line drawn by the legislature can't be unconstitutional.

THE COURT: So do you think the Supreme Court had so much trouble with this in *Chiodo* because the crime before them was an aggravated misdemeanor OWI, and had it been OWI Third, it would have been a felony and it would have been simple.

MR. THOMPSON: If it had been a felony, the case would never have been filed. I mean, keep in mind that's the other thing, I think, procedurally how different this is from the *Chiodo* case.

So in the *Chiodo* case, you know, somebody was charged with an aggravated misdemeanor, which under the law, under the code, nobody would have said you're disqualified from voting. I mean, there's a longstanding statutory scheme in Iowa. But an argument was made by the candidate that wanted to challenge the candidacy of the other that, oh, there's argument -- there's this constitutional argument that even though under the law you're not disqualified as written, that we think under the constitution you should be disqualified.

So the thing about *Chiodo* is it was an effort to use, you know, a pretty narrow and leveraged reading of one or two cases, essentially *Flannagan*, to disenfranchise not just a candidate, but if you remember the facts, I mean, literally 50 or 60,000 Iowans.

So, I mean, back to the point of the Petitioners, the voting rights are important, the Court absolutely understood that and so they looked at it. And so, you know, this was a reach beyond the statute and the Court looked at it and said, you know — and they found it -- they got there a couple different ways, which is why we have a complicated decision, and they said we're not going to do that. We're not going to go beyond the statute. And they totally begged the

question about this case, which is okay. We're not finding -- they did not find the statute unconstitutional. Said we're not doing that. And they said we're not -- we're saving for another day the idea of whether there are felonies that aren't infamous crimes. And so -- and the answer is, I think, they all are. And I think Justice Mansfield laid that out in his special concurrence. I think there is an argument, an argument based on law, the legal cases based on original intent, based on the presumption that a statutory scheme should be upheld. If there is a way to find it constitutional, that's the standard of review here. That's the right line. And that it is complicated and there's no doubt that it has evolved. As pointed out, at one point people in Iowa thought sodomy was a crime against nature and you were basically excluded from society. That's not true today.

So the line between felony and non-felony is an appropriate line. It's -- as we've pointed out, it's a manageable line because one of the things about, you know, democratic governance and the system, I mean, there's got to be -- especially when it comes to voting rights -- a mechanism that is predictable and understandable and that people understand what their rights are.

And I know that Justice Mansfield predicted that this nascent discussion in the plurality decision would lead to challenges, and here we have our first. And if the test that's being proposed is adopted, you literally -- and I don't know how many crimes we have in Iowa anymore -- but, literally, it argues for a case-by-case analysis of every crime. And that's not -- that is not manageable and it's also not what the framers had in mind. I mean, they were categorical. They used words, you know, that were broad.

And so this has got to be something that is approached with, you know, a legal juristic discipline, and the standards of review matter in something like this, that a constitutional challenge to a statute should be based more upon more than a theoretical idea that, well, there could be this or it could be that. Here we have a very focal issue which is, you know, did the legislature -- you know, were they outside -- did they step outside their authority and violate the constitution when they put into statutory form the idea that infamous crimes equal felony, when that had been part of the Iowa jurisprudence going back to the turn of the century, and it was consistent with not only the original intent, but the original interpretation of the Iowa concept of infamous crime.

I think, unless you have any more specific questions, that's kind of the general framework of my argument, Your Honor.

THE COURT: All right. Thank you. Ms. Bettis, anything further?

MS. BETTIS: Yes, Your Honor. Thank you. I would like to rebut a number of points, and I'll try to focus on the few that I think are relevant to the outcome of this case.

So I'm actually quite glad that the Respondent raised the 1839 territorial statute, and that's because that statute, if it shows anything, supports the determination that the definition of infamous crimes does not include all felonies and is not coextensive felonies.

So Justice Mansfield does cite the 1839 statute in his special concurrence to say that it seems to include the crimes that are felonies, so it more or less says that infamous crime means felony. Actually, when you look at the 1839 territorial code, there are a host of felonies of crimes that are punishable by lengthy prison terms that are not in that list. So included are manslaughter, poisoning, escape of a prisoner, assisting a prisoner to escape, and fraud crimes like selling lands twice. And that's actually

supportive of what the plurality finds, which is that in light of the text and placement of Infamous Crimes Clause and the fact that voters are protected from arrest in event of felony in that same Article II, very proximately in distance to the Infamous Crimes Clause there, our founders did not use those words to mean the same thing. That they are different words with different meanings and are not coextensive.

The plurality and the dissent, a majority of the justices have already rejected that argument that the 1839 statute is determinative. As they point out it was repealed a full generation prior to the 1957 constitution. Instead, the statute that was in place at the time of the 1857 constitutional convention was enacted in 1951 and that's the one that defines infamous crime as bribery of a public official, bribery by a public official, and embezzlement of public funds.

I'm also glad to have the opportunity to address in 2008 the constitutional amendment which was also relied on by Justice Mansfield, but which was resoundingly rejected by a majority of the court in *Chiodo*, the plurality and the dissent agreed that the 2008 constitutional amendment was technical in nature. It did exactly what it purported to do, which was to change offensive language describing persons with

intellectual disabilities, which previously had been idiot or insane person, and now is a person adjudicated incompetent to vote.

The question of the Infamous Crimes Clause was simply not in front of voters and was not -- and there's no way to construe that 2008 constitutional amendment as a ratification of anything that it was not intended to ratify.

And then I just wanted to go back to what it is that *Chiodo* -- what it is that *Chiodo* did and where there is a majority agreement among the Supreme Court in the *Chiodo* decision. It is not the case that *Chiodo* left intact *Haubrich* and *Blodgett* and *Flannagan*. The holding of the case is not just the outcome of the case. The holding of the case is the rationale underpinning the outcome of that case and a majority of the justices, the plurality and special concurrence, reject that rationale which defines infamous crime as the punishment, that that crime subjects somebody who's been convicted of that crime to.

And so the concurrence even remarks the plurality enjoined by the concurrence has done a very good job of saying what is or isn't. It isn't that old standard from *Haubrich* and *Blodgett* and *Flannagan*. And the *Wilson* and *Cavanaugh* cases, while they may be

interesting as to the concept of infamous crime as a limiting principle in who can testify and impeachment in the Rules of Evidence are not cases interpreting Article II, Section 5 of the constitution. The cases that are interpreting Article II, Section 5 of our constitution as it relates to voting are that *Flannagan*, *Blodgett* and *Haubrich* line of cases and those absolutely have been overturned by a majority of the court in their rationale.

And so what we can then do is read the other points where *Chiodo* has majority agreement on the courts and look at the fact that the legislature has been specifically divested of the authority to tinker with the definition of infamous crime so as to disqualify voters in our constitution, and it becomes constitutionally not consistent, cohesive or logical that the legislature can add to or subtract from the qualifications of voters based on whether a crime is designated as a felony or misdemeanor. And OWI second offense is a great example of that because the nature of these crimes doesn't change when the crime is committed in Indiana or New York where it's classified as a felony.

There are other examples under federal laws, possession of marijuana second offense is a felony. In

Iowa that's a misdemeanor. That doesn't mean that somebody who is convicted of possession of marijuana second offense by a federal court has been convicted of an infamous crime.

And so that statute which defines infamous crime as all felonies is unconstitutional beyond a reasonable doubt as applied to people who have been convicted of felonies that aren't infamous.

And I just wanted to add because the Respondent focuses on the crimen falsi test as, perhaps, the best place for this Court to land in looking at these three options that the *Chiodo* court lays out, and I just wanted to point out that crimen falsi is a standard which includes both felonies and misdemeanors. It doesn't include all felonies. And the essential element, and you can hear it in the Latin words crimen falsi, is that it's a crime of falsehood. So it involves as an element of the crime a specific intent to deceive or defraud.

And Mrs. Griffin, even if this Court does rely on the crimen falsi standard, which is relevant to the impeachability of a witness certainly, but is not relevant to the integrity of our system of government and the purity of the ballot box, has not been convicted of a crimen falsi. Thank you, Your Honor.

THE COURT: Thank you. All right. Well, both of you did an excellent job and I appreciate the quality of the argument, and the Court will take the matter under advisement.

MR. THOMPSON: Thank you, Your Honor.

MS. BETTIS: Thank you, Your Honor.

(Record concluded at 9:25 a.m.)

CERTIFICATE

The undersigned, one of the Official Court Reporters in and for the Fifth Judicial District of Iowa, which embraces the County of Polk, hereby certifies:

That she acted as such reporter during the proceedings as set out in the title page attached to this transcript, in the District Court of Iowa in and for Polk County, and took down in shorthand the testimony offered and proceedings had on said hearing.

That the foregoing pages of computer-generated matter are a full, true, and complete transcript of said shorthand notes so taken by her in said cause and that said transcript contains all of the testimony offered and proceedings had on said trial at the times therein shown.

Dated this 13th day of November, 2015.

/s/ Rebecca Tierney
REBECCA TIERNEY, CSR, RPR, RMR
OFFICIAL COURT REPORTER

ORDERED: OCTOBER 3, 2015
DELIVERED: NOVEMBER 13 2015
ORDERED BY: RITA BETTIS

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, **Petitioner,** **vs.** **PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official Capacities as the County Auditor of Lee County, Iowa,** **Respondents.**	**CASE NO. EQCE077368** **RULING ON MOTIONS FOR SUMMARY JUDGMENT**

On August 6, 2015, Petitioner and Respondents' Motions for Summary Judgment came on for hearing. Petitioner Kelli Jo Griffin appeared through her attorney Rita Bettis. Respondents appeared through Iowa Solicitor General Jeffrey Thompson. After reviewing the entire summary judgment record and hearing the arguments of counsel, the Court enters the following Ruling:

I. Statement of the Case.

Petitioner, Kelli Jo Griffin, ("Griffin") seeks summary judgment granting declaratory judgment and supplemental relief to protect her right to vote and substantive due process.

First, Griffin claims the statutes, regulations, forms, and procedures which disqualify her from registering to vote and voting constitute denial of her right to vote in violation of the Iowa Constitution because her prior felony conviction for delivery of less than 100 grams of cocaine is not among the category of felonies which qualify as "infamous crimes" under article II, section 5 of the Iowa Constitution; and

Second, Griffin claims the burden on her fundamental right to vote in Iowa resulting from those statutes, regulations, forms, and procedures that bar her from voting without a grant by the Governor of a restoration of her right to vote, violate her right to substantive due process assured under article I, section 9 of the Iowa Constitution because they fail to meet the rigors of strict scrutiny analysis.

The Respondents, Iowa Secretary of State Paul Pate and Lee County Auditor Denise Fraise, seek summary judgment upholding the constitutionality of Iowa's voting scheme including Iowa Code section 39.3(8) defining the constitutional term of "infamous crime" as a felony under Iowa or federal law.

II. Summary Judgment Standard**.**

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and…the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 501 (Iowa 2013); *Varnum v. Brien*, 763 N.W.2d 862, 874 (Iowa 2009). The Court resolves a matter on summary judgment if the record reveals a conflict concerning only "the legal consequences of undisputed facts." *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 802 (Iowa 2003) (citation omitted). The Iowa Constitution defines certain individual rights which may not be infringed by the government through legislation or executive order. It is the proper role of the Court to interpret the constitution. A statute inconsistent with the Iowa Constitution must be declared void. *Varnum*, 763 N.W.2d at 874. The parties agree that the constitutional issues presented in this case may be resolved on summary judgment because no issues of material fact exist and they have stipulated to a joint statement of facts and appendix.

III. Statement of Undisputed Facts.

Kelli Jo Griffin resides in Montrose, Lee County, Iowa. Griffin has successfully rehabilitated herself after a period of recovery from substance abuse and addiction. Griffin has discharged two felony convictions related to substance abuse.

On February 14, 2001, Griffin was convicted of possession of ethyl ether in violation of Iowa Code section 124.401(4)(c), a Class D felony. She received a suspended prison sentence and was placed on probation which she discharged on February 14, 2006. Upon discharge of her sentence, Griffin's voting rights were restored automatically through operation of former Governor Thomas J. Vilsack's Executive Order 42. Executive Order 42 "utilized a process that granted the restoration of citizenship rights automatically." Between the discharge of her sentence in 2006 and the date of her second drug conviction on January 7, 2008, Griffin registered to vote and voted twice: both in an August 8, 2006 local election and the November 7, 2006 general election.

On January 7, 2008, Griffin was convicted of Delivery of 100 Grams or Less of Cocaine, in violation of Iowa Code section 124.401(1)(c)(2)(b), a Class C felony. The court suspended her sentence and placed her on probation for five (5) years. Griffin successfully discharged her sentence on January 7, 2013. At the time of her sentencing in 2008, Griffin's defense attorney advised her that her right to vote would be restored automatically upon discharging her criminal sentence. That information was accurate at the time it was given in 2008 when Governor Vilsack's Executive Order 42 remained in effect.

On November 5, 2013, Griffin registered and voted in an uncontested municipal election held in Montrose, Iowa. Unbeknownst to Griffin, Governor Terry E. Branstad rescinded Executive Order 42 in 2011 when he entered Executive Order 70. Executive Order 70 ended the

system of automatic restoration of voting rights for people who completed their criminal sentences. Instead, Executive Order 70 substituted an application process for the restoration of voting rights for individuals convicted of felonies.

Executive Order 70 requires an individual convicted of a felony to complete an application for restoration of rights including a multi-step paperwork process, demonstrate that he or she has fully paid or is current on any payments for court-imposed fines, fees and restitution, as well as obtain and provide a copy of their Iowa Criminal History Record from the Iowa Division of Criminal Investigation at a cost of $15.00 per request.

Following the Iowa Supreme Court's decision in decision in *Chiodo*, Governor Branstad's Office no longer requires persons convicted of aggravated misdemeanors to apply to have their right to vote restored. However, Executive Order 70 still requires convicted felons to do so. (Executive Order 70, App. Ex. 8). ("Any person convicted of a felony is barred from voting or holding office. In order to vote or hold public office, a person convicted of a felony must apply to the Office of the Governor for restoration of citizenship rights—right to vote and hold public office and have the Governor grant a restoration.")

After the 2013 municipal election in Montrose, Auditor Fraise ran Griffin's ballot information through the voter registration program at the Lee County Auditor's Office. The Auditor determined that Griffin was ineligible to vote because of her prior felony conviction. On December 16, 2013, the State of Iowa charged Griffin with Perjury in violation of Iowa Code section 720.2, a Class D felony, for registering to vote and voting in the November 5, 2013 election. Griffin pled not guilty. On March 19-20, 2014, Griffin was acquitted by a Lee County jury.

But for her 2008 felony conviction, Griffin satisfies the requirements to register to vote under Iowa's existing statutes and regulations. Griffin has not applied for a restoration of her right to vote by the Governor of Iowa subsequent to her 2008 felony conviction, nor otherwise had her right to vote restored automatically by the Governor of Iowa following the discharge of her sentence in 2013 under Executive Order 70.

IV. Voting Rights.

Article II, section 1 of the Iowa Constitution assures the right of suffrage to every citizen of the United States who is 21 years of age [1] and an Iowa resident according to the terms laid out by law. However, article II, section 5 provides, "a person convicted of any infamous crime shall not be entitled to the privilege of an elector." The Iowa Constitution does not define the term "infamous crime." The Iowa General Assembly defined "infamous crime" in Iowa Code section 39.3(8) as "a felony as defined in section 707.7, or an offense classified as a felony under federal law." Griffin asserts that Iowa Code section 39.3(8) violates article II, section 5 of the Iowa Constitution as applied to her and that her crime of conviction, Delivery of 100 Grams or Less of Cocaine, a Class C felony, is not an "infamous crime" so as to disenfranchise her .

Griffin relies on the plurality opinion of the Iowa Supreme Court in *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014) to support her position. *Chiodo* was a judicial review action of the decision of the state elections panel overruling an objection to the candidacy for election to the Iowa Senate of an individual who had been convicted of Operating While Intoxicated, second offense, an aggravated misdemeanor. The district court affirmed the decision of the panel. On appeal, the objector claimed this individual was disqualified from

[1] Amendment XXVI to the United States Constitution lowered the voting age applicable to the states to eighteen years of age. U.S. Const. amend. XXVI.

holding office because he had been convicted of an "infamous crime" under article II, section 5 of the Iowa Constitution because an aggravated misdemeanor is punishable by imprisonment in the state penitentiary.

Chief Justice Cady wrote for a plurality of three justices in *Chiodo*. The Court noted, "We do not begin our resolution of this case on a clean slate. We have considered the meaning of the phrase 'infamous crime' in the past and have given it a rather direct and straightforward definition. We have said '[a]ny crime punishable by imprisonment in the penitentiary is an infamous crime.' *State ex rel. Dean v. Haubrich,* 248 Iowa 978, 980, 83 N.W.2d 451, 452 (1957); *accord Blodgett v. Clarke,* 177 Iowa 575, 578, 159 N.W. 243, 244 (1916) (per curiam); *see also Flannagan v. Jepson,* 177 Iowa 393, 399–400, 158 N.W. 641, 643 (1916)." *Chiodo*, 846 N.W.2d at 849. The Court found that *Blodgett* and *Haubrich* were decided under article II, section 5 of the Iowa Constitution without an independent textual analysis. *Id*. at 850-51. Analyzing article II, section 5 in context, the plurality rejected the notion that the determination of the infamy of a crime depends upon punishment. The plurality wrote, "We conclude *Blodgett* was clearly erroneous and now overrule it. We also disapprove of any suggestion in *Flannagan* or *Haubrich* that the mere fact that a crime is punishable by confinement in a penitentiary disqualifies the offender from exercising the privilege of an elector." *Id.* at 852.

The plurality went on to consider whether the aggravated misdemeanor crime of OWI, second offense, is an "infamous crime." The Court relied heavily on *Snyder v. King,* 958 N.E.2d 764, 773–76 (Ind. 2011) (reviewing the historical backdrop of its infamous crimes clause of the Indiana Constitution and concluding "[h]istory thus demonstrates that whether a crime is infamous ... depends ... on the nature of the crime itself"). *Id*.

Tracing the history of the concept of infamy in Iowa from territorial laws of 1839, [2] through the proposed constitution of 1844 [3], the 1846 constitution [4] and the constitutional convention of 1857 [5], the plurality found the Constitution does not empower the legislature to define "infamous crime." The plurality observed:

> Our drafters wanted the voting process in Iowa to be meaningful so that the voice of voters would have effective meaning. Thus, disenfranchisement of infamous criminals parallels disenfranchisement of incompetent persons under article II, section 5. The infamous crimes clause incapacitates infamous criminals who would otherwise threaten to subvert the voting process and diminish the voices of those casting legitimate ballots. As a result, the regulatory focus of disenfranchisement under article II reveals the meaning of an "infamous crime" under article II, section 5 looks not only to the classification of the crime itself, but how a voter's conviction of that crime might compromise the integrity of our process of democratic governance through the ballot box.

Chiodo, 846 N.W.2d at 856.

The plurality of three justices joined by two concurring justices in *Chiodo* held that OWI, second offense, an aggravated misdemeanor, is not an infamous crime under article II, section 5

[2] " 'Each and every person in this Territory who may hereafter be convicted of the crime of rape, kidnapping, wilful [sic] and corrupt perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, of serving as a juror, and of giving testimony in this Territory.' The Statute Laws of the Territory of Iowa, Code of Criminal Jurisprudence, Tenth Div., § 109, at 182 (1839)." *Chiodo,* 846 N.W.2d at 855.

[3] "The proposed 1844 Iowa Constitution had contained a provision denying the privileges of an elector to 'persons declared infamous *by act of the legislature.*' Iowa Const. art. III, § 5 (1844) (emphasis added)." *Chiodo,* 846 N.W.2d at 855.

[4] "*See* Iowa Const. art. III, § 5 (1846) ("No idiot, or insane person, or persons convicted of any infamous crime, shall be entitled to the privileges of an elector.")". *Chiodo,* 846 N.W.2d at 855.

[5] "More directly, it appears the drafters at our 1857 constitutional convention intended to deprive the legislature of the power to define infamous crimes… The drafters at the 1857 constitutional convention did not reinsert the 1844 language. Certainly, the drafters at our 1857 constitutional convention knew how to delegate authority over elections to the legislature." *Chiodo*, at 855.

of the Iowa Constitution. However, the reasoning of the plurality and the special concurrence differed.

> Focusing on the regulatory goals of article II, section 5, the plurality reasoned:
>
> Any definition of the phrase "infamous crime" has vast implications and is not easy to articulate. However, we have said regulatory measures abridging the right to vote "must be carefully and meticulously scrutinized." *Devine,* 268 N.W.2d at 623. Similarly, the Supreme Court has said measures limiting the franchise must be " 'necessary to promote a compelling governmental interest.' " *Dunn v. Blumstein,* 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274, 284 (1972) (quoting *Shapiro v. Thompson,* 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600, 615 (1969)). This context helps frame both the governmental interest at stake in protecting the integrity of the electoral process and the individual's vital interest in participating meaningfully in their government. The definition of "infamous crime" turns on the relationship particular crimes bear to this compelling interest.
>
> Some courts have settled on a standard that defines an "infamous crime" as an "affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections." *Snyder,* 958 N.E.2d at 782; *see also Otsuka,* 51 Cal. Rptr. 284, 414 P.2d at 422 ("[T]he inquiry must focus more precisely on the nature of the crime itself, and determine whether the elements of the crime are such that he who has committed it may reasonably be deemed to constitute a threat to the integrity of the elective process."). Other courts limit the definition to a "felony, a *crimen falsi* offense, or a like offense involving the charge of falsehood that affects the public administration of justice." *Commonwealth ex rel. Baldwin v. Richard,* 561 Pa. 489, 751 A.2d 647, 653 (2000). Still other courts establish the standard at crimes marked by "great moral turpitude." *Washington,* 75 Ala. at 585.
>
> Considering the crime at the center of this case, we need not conclusively articulate a precise definition of "infamous crime" at this time. We only conclude that the crime must be classified as particularly serious, and it must be a crime that reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections. We can decide this case by using the first part of this nascent definition.

Chiodo, 846 N.W.2d at 856.

Thus, the *Chiodo* plurality declined to conclusively articulate a precise definition of "infamous crime" to determine if a voter is disenfranchised by a criminal conviction. The

plurality could "only conclude that the crime must be classified as particularly serious, and it must be a crime that reveals that voters who commit the crime would tend to undermine the process of democratic governance through elections." *Id.* The plurality recognized that felonies are serious crimes and held that since OWI, second offense, was an aggravated misdemeanor, it did not disenfranchise the voter under this nascent standard because "[i]t is a crime that does not require specific criminal intent and lacks a nexus to preserving the integrity of the election process.

Id. at 857.

The plurality opinion ended with the following caveat:

> Our decision today is limited. It does not render the legislative definition of an "infamous crime" under Iowa Code section 39.3(8) unconstitutional. We only hold OWI, second offense, is not an "infamous crime" under article II, section 5, and leave it for future cases to decide which felonies might fall within the meaning of "infamous crime[s]" that disqualify Iowans from voting.

Id.

In a special concurrence, Justices Mansfield and Waterman agreed that a conviction of OWI second did not disenfranchise the voter because it is not a felony crime and, thus, was not an "infamous crime." However, in his special concurrence, Justice Mansfield was critical of the plurality's reliance on the Indiana Supreme Court's opinion in *Snyder* and the vagueness of the plurality's nascent standard. The special concurrence observed:

> As noted by my colleagues, there has been considerable water under the bridge since 1857. In 1916, we declared that any crime punishable by imprisonment in the penitentiary was an infamous crime for purposes of article II, section 5. *See Blodgett v. Clarke,* 177 Iowa 575, 578, 159 N.W. 243, 244 (1916) (per curiam). We reiterated that interpretation in 1957. *See State ex rel. Dean v. Haubrich,* 248 Iowa 978, 980, 83 N.W.2d 451, 452 (1957). However, when those cases were decided, "felony" and "crime punishable by imprisonment in the penitentiary" were synonymous. *See* Iowa Code §§ 5093–5094 (1897); *id.* §§ 687.2, .4 (1954). There was no such thing as an aggravated misdemeanor punishable by imprisonment in the penitentiary. Thus, like the Panel and the district court, I do not regard those precedents as controlling on whether a nonfelony that was

> potentially punishable by imprisonment in the penitentiary would disqualify a person from voting. Those cases do effectively hold that felons cannot vote or hold elective office under the Iowa Constitution. And for that proposition, I think they remain good law.

Chiodo, 846 N.W.2d at 861 (Mansfield, J., concurring specially).

The concurring opinion in *Chiodo* would uphold the statute defining infamous crimes as felony crimes. The concurring justices rejected the second element of the plurality's nascent standard as unnecessary, inconsistent with precedent, and unworkable in the administration of elections. *Id*.

In his dissent, Justice Wiggins disagreed with the outcome of the case. Concerning precedent, Justice Wiggins wrote:

> We have consistently defined "infamous crime" under our constitution as a crime for which the legislature fixed the maximum punishment as confinement in prison. *State ex rel. Dean v. Haubrich,* 248 Iowa 978, 980, 83 N.W.2d 451, 452 (1957); *Blodgett v. Clarke,* 177 Iowa 575, 578, 159 N.W. 243, 244 (1916) (per curiam); *Flannagan v. Jepson,* 177 Iowa 393, 400, 158 N.W. 641, 643 (1916). When the legislature adopted the legislative scheme to have three classes of misdemeanors in Iowa Code section 701.8, *see* 1976 Iowa Acts ch. 1245, § 108 (codified at Iowa Code § 701.8 (1979)), it knew the constitutional definition of "infamous crime" was any crime for which the legislature fixed the maximum punishment as confinement in prison. Thus, by conscious choice, the legislature made an aggravated misdemeanor an infamous crime.
>
> Eliminating our bright-line rule is not only unnecessary, but also dangerous. Now, we can no longer look to the crime's penalty to determine who can vote and who cannot vote. Rather, we now apply certain factors to make that determination. The plurality's approach does little to settle the law.

Chiodo, 846 N.W.2d at 863-64 (Wiggins, J., dissenting).

Justice Appel took no part in *Chiodo.* Three justices rejected *Blodgett* and *Haubrich* and held that the crime of OWI, second offense, was not infamous under a new and developing standard; two justices recognized *Blodgett* and *Haubrich* as precedent for the proposition that felons are disqualified from voting or holding office under the Iowa Constitution; and one justice cited *Blodgett* and *Haubrich* as precedent to support his view that OWI, second offense, is an

"infamous crime." Therefore, at least as applied to felony convictions, *Blodgett* and *Haubrich,* both decided under article II, section 5 of the Iowa Constitution, were not overruled by a majority of the Iowa Supreme Court in *Chiodo*.

Nevertheless, Griffin relies on *Chiodo* to support her claim that, Delivery of 100 Grams or Less of Cocaine, a Class C felony, is not an "infamous crime" under article II, section 5 of the Iowa Constitution. Griffin recognizes her crime of conviction is a serious felony offense under the first element of the nascent standard. However, as to the second element, Griffin argues Delivery of Cocaine is not an "infamous crime" because it lacks a nexus to preserving integrity the electoral process since it would not tend to undermine the process of governance through elections like the crimes of elections fraud, bribery, perjury, and treason. *Id.* at 857. In addition, like OWI, Delivery of Cocaine is a general intent crime that does not have an element of specific intent. *Id.* at 856. Furthermore, Griffin argues Delivery of Cocaine is not a *crimen falsi* offense or a like offense involving the charge of falsehood that affects the public administration of justice. It is not a crime of dishonesty like forgery, embezzlement, theft or criminal fraud. Finally, Griffin asserts Delivery of Cocaine is not a crime of moral turpitude like arson, rape or murder that would be understood by the founders as a particularly heinous crime. Thus, under any standard that might be adopted by the Iowa Supreme Court, and particularly the nascent standard enunciated by the plurality in *Chiodo*, Griffin believes that Delivery of Cocaine is a crime of addiction and not an infamous crime that disenfranchises her under the Iowa Constitution.

Secretary Pate and Auditor Fraise contend that Iowa Code section 39.3(8) defining "infamous crime" as a felony crime is consistent with article II, section 5 of the Iowa Constitution as interpreted in *Blodgett* and *Haubrich.* They note that the *Chiodo* court did not

hold that the legislative definition of "infamous crime" under Iowa Code section 39.3(8) is unconstitutional. *Id.* at 857. Secretary Pate and Auditor Fraise contend the nascent standard of the *Chiodo* plurality is unworkable for election officials as well as potential voters and will lead to a flood of litigation to adjudicate the voting rights of individual convicted felons on a case-by-case basis. They believe the legislature is in the best position to draw the appropriate line of infamy for purposes of voting rights. *Commonwealth ex rel. Att'y Gen. Corbett v. Griffin*, 946 A.2d 668, 675 (Pa. 2008). Finally, under any standard, Secretary Pate and Auditor Fraise argue that the grave societal costs of felonious narcotics distribution render it an "infamous crime" that disenfranchises the perpetrator.

As Griffin's own addiction demonstrates, Delivery of Cocaine is not a victimless crime. Secretary Pate and Auditor Fraise note that narcotics distribution and illicit drug use causes "permanent physical and emotional damage to users and negatively impact[s] their families, coworkers, and many others with whom they have impact." Nat'l Drug Threat Assessment 2010, Impact of Drugs on Society, U.S. Dep't of Justice, *available at* http://www.justice.gov/archive/ndic/pubs38/38661/drugImpact.htm. While Griffin may have committed this crime to fuel her addiction, others who perpetrate the same crime may be engaged in a criminal enterprise supplied by international drug cartels. *Id*. ("Wholesale-level DTOs [Drug Trafficking Organizations], especially Mexican DTOs, constitute the greatest drug trafficking threat to the United States.").

Under the analysis adopted by the *Chiodo* plurality, it would be up to the courts to determine the infamy of a crime rather than the legislature by statute. Perhaps this case is one of those "future cases to decide which felonies might fall within the meaning of 'infamous crime[s]' that disqualify Iowans from voting" that will lead to the development of a new constitutional

standard." *Chiodo,* 846 N.W.2d at 857. This case raises many difficult questions that would have to be decided by judges under the nascent standard touching upon whether the Delivery of Cocaine tends to undermine the process of democratic governance through elections. Do the votes of convicted drug dealers tend to undermine the process of democratic governance through elections? Is Griffin's crime of Delivery of Cocaine less of a threat to the democratic process than a person convicted of felonious Possession of Cocaine with Intent to Deliver, a specific intent crime? Given the societal costs of narcotics distribution, is Delivery of Cocaine less morally repugnant than crimes against persons? Are drug dealers more honest and trustworthy voters than perpetrators of *crimen falsi*?

These questions and more would have to be answered by Iowa courts on a case-by-case, felony-by-felony, basis under the nascent standard the of *Chiodo* plurality in order to determine whether the crime is such an "affront to democratic governance or the public administration of justice such that there is a reasonable probability that a person convicted of such a crime poses a threat to the integrity of elections." *Snyder,* 958 N.E.2d at 782. Unfortunately, judges would have little guidance for these adjudications because as Justice Mansfield warned in his concurring opinion in *Chiodo*, "this standard is essentially no standard at all and will lead to more voting and ballot cases as we sort out the implications of today's ruling." *Chiodo*, 846 N.W.2d at 860.

Justice Wiggins concluded his dissent in *Chiodo* with a maritime advisory. He said, "Today I fear we are abandoning a seaworthy vessel of precedent to swim into dangerous and uncharted waters." *Id*. at 865 (Wiggins, J., dissenting). This Court chooses to ride out this jurisprudential storm in the safe harbor of over 100 years of precedent. Concerning electors like Griffin, who have been convicted of a felony, *Blodgett* and *Haubrich* retain precedential value

until they are overruled by a majority of the Iowa Supreme Court. The plurality opinion in *Chiodo* is a strong signal that the moorings of *Blodgett* and *Haubrich* may not be secure for long. Nevertheless, district judges are tied by the lines of precedent. *State v. Eichler,* 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.")

The three concurring and dissenting justices in *Chiodo* would follow *Blodgett* and *Haubrich* in determining whether a felony is an infamous crime under article II, section 5 of the Iowa Constitution. *Blodgett* and *Haubrich* "effectively hold that felons cannot vote or hold elective office under the Iowa Constitution. And for that proposition, I think they remain good law." *Chiodo*, 846 N.W.2d at 861 (Mansfield, J., concurring). I think so too. Statutes are "cloaked with a presumption of constitutionality. *State v. Thompson*, 836 N.W.2d 470, 483 (Iowa 2013). *Chiodo* did not hold Iowa Code section 39.3(8) unconstitutional. This Court concludes that convicted felons, including Kelli Jo Griffin, remain disenfranchised under section 39.3(8) and the "infamous crimes" clause of article II, section 5 of the Iowa Constitution until a majority of our highest court holds otherwise.

V. Due Process.

Griffin asserts the burden on her fundamental right to vote in Iowa resulting from statutes that bar her from voting without a restoration of rights by grant of the Governor violate her right to substantive due process assured under article I, section 9 of the Iowa Constitution. Iowa's Due Process Clause provides that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9.

The substantive due process inquiry is two-step. First, the Court determines the nature of the individual right that is affected by the challenged government action. *See State v. Seering*,

701 N.W.2d 655, 662 (Iowa 2005). Second, if the Court determines that the right implicated is fundamental, it applies strict scrutiny to the government action; if non-fundamental, it applies rational basis review. *Id.; State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007); *State v. Krier*, 772 N.W.2d 270, 2009 WL 2184825 (Iowa Ct. App. 2009) (unpublished). For a government action to survive strict scrutiny, it must be narrowly tailored to serve a compelling state interest. *Seering*, 701 N.W.2d at 662. The due process clauses of the United States and Iowa Constitutions "are nearly identical in scope, import, and purpose." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 237 (Iowa 2002). However, the Iowa Supreme Court interprets our due process to be more protective of the rights and liberties of Iowan than under the U.S. Constitution. *See State v. Cox*, 781 N.W.2d 757, 761-62 (Iowa 2010); *Callender v. Skiles*, 591 N.W.2d 182, 187-89 (Iowa 1999).

Voting is a fundamental right in Iowa. *Chiodo*, 846 N.W.2d at 848. The State of Iowa has a compelling governmental interest in regulating voting. *Id.* at 856. However, "any alleged infringement of the right to vote must be carefully and meticulously scrutinized. Statutory regulation of voting and election procedure is permissible so long as the statutes are calculated to facilitate and secure, rather than subvert or impede, the right to vote. Among legitimate statutory objects are shielding the elector from the influence of coercion and corruption, protecting the integrity of the ballot, and insuring the orderly conduct of elections." *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978) (citations omitted).

Griffin argues that by including all felonies, Iowa Code section 39.8(3) is not narrowly tailored to accomplish a compelling governmental interest because it unnecessarily blocks thousands of constitutionally qualified Iowa electors of their right to vote. Griffin complains that convicted felons must apply to the Governor of Iowa for restoration of their right to vote under

Executive Order 70 and that the application process is an unconstitutional burden on her franchise. She contends the nature of this heavy burden is illustrated by the low numbers of potentially eligible Iowans who have applied for a restoration of rights. *See* Ryan J. Foley, "Iowa Governor Restores More Felons' Voting Rights," WASH. TIMES, Jan. 14, 2014, http://tinyurl.com/ob2qkkn (from 2011 to 2013, an estimated 25,000 Iowans discharged their sentences, but only 40 regained their voting rights). Accordingly, Griffin concludes these statutes and regulations do not meet the rigors of strict scrutiny due process analysis under the Iowa Constitution and are unconstitutional as applied to her.

The Court concludes section 39.8(3) and Executive Order 70 are reasonably calculated to facilitate and secure the right to vote in Iowa. The objective of the statute and regulations are to protecting the integrity of the ballot and insuring the orderly conduct of elections. Election officials must have a predictable standard for determining the qualifications of voters. The disenfranchisement of convicted felons including individuals convicted of drug trafficking offenses like Griffin protects the integrity of the ballot for other citizens participating in the democratic process.

Further, the Governor's restoration of rights process is not an unconstitutional burden. The Governor's authority to restore the voting rights of convicted felons is rooted in Article IV, section 16 of the Iowa Constitution. See *Haubrich*, 83 N.W.2d at 455. Iowa Code section 914.1 provides, "The power of the Governor under the Constitution of the State of Iowa to grant a … restoration of rights of citizenship shall not be impaired." Through the restoration of rights process, the Governor can administratively determine on a case-by-case basis whether the vote of a particular individual represents a threat to the integrity of the democratic process through elections. For example, the vote of an individual like Griffin who has rehabilitated herself

following a crime of addiction may not threaten the integrity of the democratic process whereas the votes of people convicted of the same crime who may be gang members or drug dealers with ties to international drug trafficking might. It would be far more burdensome for potential voters and far more confusing for election officials if judges were required to decide such questions on a case-by-case basis through the process of litigation. The administrative process established by the Governor is more suited to this type of determination.

Griffin has chosen not to access the Governor's restoration of rights process because of paperwork requirements. She would have to demonstrate that she has fully paid or is current on any payments for court-imposed fines, fees and restitution and obtain and provide a copy of her Iowa Criminal History Record from the Iowa Division of Criminal Investigation at a cost of $15.00. But this is not an unreasonable burden for a felon to shoulder to have her citizenship rights restored. In fact, it is less burdensome than litigation.

The Court concludes that Iowa Code section 39.8(3) and Executive Order 70 are narrowly tailored to accomplish a compelling governmental interest of facilitating and securing, rather than subverting or impeding, the right to vote. Section 39.8(3) establishes a clear standard for disenfranchisement by felony conviction. Executive Order 70 establishes a reasonable process for restoration of rights on a case-by-case basis by the Governor without undue burden or expense. This legislative and executive process protects the integrity of the ballot and insures the orderly conduct of elections. It survives strict scrutiny and does not violate Griffin's right to substantive due process.

VI. Ruling and Order.

Respondents Iowa Secretary of State Paul Pate and Lee County Auditor Denise Fraise's Motions for Summary Judgment are sustained.

Petitioner Kelli Jo Griffin's Motion for Summary Judgment is overruled. Petitioner's Petition is dismissed. Petitioner shall pay the court costs.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCE077368	KELLI JO GRIFFIN VS TERRY BRANSTAD ET AL

So Ordered

Arthur E. Gamble, Chief District Judge,
Fifth Judicial District of Iowa

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN, Petitioner, vs. PAUL PATE, in his official capacities as the Secretary of State of Iowa, and DENISE FRAISE, in her official capacities as the County Auditor of Lee County, Iowa, Respondents.	EQUITY CASE NO. EQCE 077368 **NOTICE OF APPEAL**

To: The Clerk of the District Court for Polk County; the Clerk of the Supreme Court of Iowa; Rebecca Tierney, Official Court Reporter; and counsel of record for the Respondents, Jeffrey S. Thompson, Solicitor General of the State of Iowa, Meghan Gavin, Assistant Attorney General, and Michael P. Short, Lee County Attorney.

NOTICE is HEREBY GIVEN pursuant to Iowa R. App. P. 6.101(1)(b) that the Petitioner, Kelli Jo Griffin, APPEALS to the Supreme Court of Iowa from the final order entered in this case on September 28, 2015, issued by the Honorable Arthur E. Gamble, Chief District Judge, and from all adverse rulings and orders inhering therein.

Respectfully submitted,

/s/Rita Bettis
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ATTORNEYS FOR PETITIONER

*Motion for admission *pro hac vice* pending

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the 29th day of September 2015 by _____ personal delivery __X___ deposit in the U.S. mail ___X___ EDMS.

/s/Rita Bettis

Signature of person making service.

By deposit in the U.S. mail:

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