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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