IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

State of Iowa, ex rel. Gary R. Allison as County Attorney for Muscatine County, Iowa Plaintiff,	:	No. EQCV016165
vs.	:	MEMORANDA OF AUTHORITIES IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN RESISTANCE TO MOTION FOR SUMMARY JUDGMENT
Thomas J. Vilsack, Governor of the State of Iowa, Defendant.	:	

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COMES NOW the State of Iowa, by Muscatine County Attorney Gary R. Allison and submits this memoranda in support of its cross motion for summary judgment and in resistance to the defendant's motion for summary judgment.

The Governor's motion for summary judgment seeks in broad terms two findings from this Court: First, that he need not comply with the regulations enacted by the General Assembly to control the executive clemency process; and Second, that he is answerable to no court for his actions. Such a ruling would be contrary to the constitution and laws of the State of Iowa and, more importantly, fundamentally detrimental to the public interest.

The facts of this case are not in dispute – Executive Order No. 42 speaks for itself. The State of Iowa believes that under the facts of the case that it is entitled to judgment as a matter of law.

I. Executive Order No. 42 violates the duly enacted regulations to which the Governor's clemency power is subject

Article IV, Section 16 of the Iowa constitution defines the Governor's power to grant various forms of executive clemency:

> The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, **subject to such regulations as may be provided by law**. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the general assembly at its next meeting, when the general assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the general assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reasons therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

(emphasis added). This litigation, at its core, resolves around the meaning of the phrase "subject to such regulations as may be provided by law."

The Iowa Supreme Court has noted the Governor's "very limited" role in criminal cases in the context of rejecting a constitutional challenge to the restriction for eligibility for parole for certain offenders on the theory that by so doing the legislature had encroached upon executive authority:

> The parole system is solely a creature of the legislature. To argue, as Phillips does, that the legislature may not restrict eligibility for parole and work release, reads too much into the separation-of-powers doctrine. This doctrine "requires that a branch [of government] not impair another in the performance of its constitutional duties." Loving v. United States, 517 U.S. 748, 757 (1996).
>
> The Iowa Constitution, on which the defendant relies, provides a very limited role for the executive branch in criminal cases. Under article IV, section 16,
>
> > [t]he governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment…
>
> Even that authority is limited by this section of the constitution, which continues, "**subject to such regulations as may be provided by law**." (Emphasis added.) While the governor also "shall have power to remit fines and forfeitures," under this section, such power is "under such regulations as may be prescribed by law; and [the governor] shall report to the general assembly ... each case of reprieve, commutation or pardon granted ...." Id. **The constitution, therefore, envisions some limitations and legislative oversight, even with respect to the executive branch's constitutional authority to ameliorate criminal sanctions.**

State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000) (emphasis added).

The "limitations and legislative oversight" described by the Iowa Supreme Court are found primarily in Iowa Code chapter 914. The Legislature has enacted a procedure by which an offender (other than those convicted of a class "A" felony) may make application for executive clemency. The chapter provides that the convict has the right to apply to the Board of Parole for its recommendation regarding executive clemency or to apply directly to the Governor for executive clemency. Iowa Code § 914.2. Although the application may be made to either the board or the Governor, the board, "shall periodically review all applications by persons convicted of criminal offenses and shall recommend to the governor the…restoration of the rights of citizenship for persons who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens." Iowa Code § 914.3(1).

The procedure grants the Governor the discretion to order the board to conduct an investigation of the application[1]. The board shall, "after careful investigation" make a recommendation regarding the application for any person for whom the board had not already issued a recommendation – i.e. for those who didn't file their application directly with the board of parole.

The Governor, "shall respond to all recommendations made by the board of parole within ninety days of the receipt of the recommendation." Iowa Code § 914.4. The Governor is required to, "state whether or not the recommendation will be granted and shall specifically set out the reasons for such action." Id.

The Victim Rights Act, Iowa Code chapter 915, contains an additional limitation on the Governor's executive clemency power:

[1] According to the responsible individual in the Governor's office, it was the defendant's practice to refer all applications for clemency to the board of parole. Thus, the Governor would have received a specific recommendation from the board for each case. (Affidavit of Hardt, ¶ 5).

> Prior to the governor granting a reprieve, pardon, or commutation[2] to an offender convicted of a violent crime, the governor shall notify a registered victim that the victim's offender has applied for a reprieve, pardon, or commutation. The governor shall notify a registered victim regarding the application not less than forty-five days prior to issuing a decision on the application. The governor shall inform the victim that the victim may submit a written opinion concerning the application.

Iowa Code § 915.19(1).

The Governor's motion for summary judgment is dismissive of the meaning of these regulations. The Governor denies that compliance with these regulations are necessary conditions precedent to the grant of clemency. In particular, the Governor denies that an offender need even make an application to the Governor before receiving a restoration of his voting rights.

It is axiomatic to say that the source of the Governor's clemency power is the Iowa Constitution. The fundamental flaw with the Governor's argument is that while he seeks to assert the clemency power given to him by the constitution, he refuses to acknowledge the very limits of that power in the constitution. The framers of the Iowa constitution deliberately used the phrase "subject to" to describe the relationship between the power and the legislature's ability to create "regulations."

"Subject to" describes a subordinate relationship in the power of the Governor to that of the legislature. "Subject to" is defined as, "contingent or conditional upon." Webster's New 20th Century Dictionary of the English Language. The term "regulations" refers to the "act or process of controlling by rule or restriction." Black's Law Dictionary (Seventh Edition). As noted by the Iowa Supreme Court, this language creates "limitations and legislative oversight" of the clemency power.

[2] This description tracks the definition of the executive clemency power found in the constitution. To the extent that the constitutional power is interpreted to include the restoration of rights, the use of the same language in Chapter 915 must be interpreted in the same fashion.

There are two ways to interpret the constitutional and statutory provisions at issue in this case. The first, suggested by the plaintiff, is that the constitution uses the terms "subject to" and "regulations" deliberately and the provisions of Chapters 914 and 915 were intended by the legislature to implement this phrase in the constitution. Under this interpretation effect is given to both the constitution and the intent of the legislature to create "regulations." Under this interpretation there is a balance between the Governor's authority to ultimately grant clemency once there has been an opportunity to investigate and receive a considered recommendation. Under this interpretation the Governor is ultimately held accountable for his decision because he must give specific reasons for it. Under this interpretation before an individual receives his rights back he must make an application, an affirmative request which would include some sort of factual showing that he has by his "conduct given satisfactory evidence that [he] will become or continue to be [a] law-abiding citizen." Iowa Code § 914.3(1).

The second interpretation, proposed by the Governor, treats the process defined in Chapters 914 and 915 as optional. Under this interpretation the legislature has not enacted "regulations" but merely a suggested procedure. Indeed, under this interpretation the Governor's clemency power is "subject to" nothing. The only limitations on the clemency power acknowledged by the defendant are that clemency may not be used before conviction or in cases of impeachment or treason. Beyond that, the Governor recognizes no limitations on his power – he would have this Court delete the term "subject to" out of our constitution. The Governor even claims that an application for

clemency is unnecessary – in fact he specifically claims that Executive Order No. 42 applies only to those who have not applied for restoration of rights.[3]

Although the right to possess a firearm is not restored by Executive Order No. 42, it is notable that the legislature, as part of Chapter 914, has sharply limited the Governor's authority to restore firearm rights for certain individuals:

> Notwithstanding any other provision of this chapter, a person who has been convicted of a forcible felony, a felony 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.
> Notwithstanding any provision of this chapter, a person seventeen years of age or younger who commits a public offense involving a firearm which is an aggravated misdemeanor against a person or a felony shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms.

Iowa Code § 914.7. Clearly, in enacting this provision, the legislature believed it was controlling the Governor's clemency power, and was not simply giving him a suggested procedure that was his option to follow.

The Ohio Supreme Court addressed the issue of what do "subject to" and "regulation" mean in this context in Maurer v. Sheward, 644 N.E.2d 369 (Ohio 1994). The Ohio Governor, two days before leaving office, had commuted the sentences of eight inmates on death row and had granted a pardon to another inmate, despite the fact that in seven of the cases the Ohio Adult Parole Authority had not received an application from the inmate and in two of the cases had not yet investigated the application or recommended action to the Governor. Id. at 514. The issues presented to the court was whether the Governor had the power under the constitution to take such an action,

[3] This creates the anomalous situation where a person who makes an application and undergoes an investigation has the chance of having his application for restoration of rights denied, but one who never files an application in the first place, or who withdraws it, automatically receives his rights back. This absurd situation is surely not what the Legislature intended in enacting Chapters 914 and 915.

whether the legislature could enact regulations which would be procedural prerequisites for the exercise of clemency power, and whether the legislature had, in fact, enacted such regulations. Id. at 517.

The Ohio Constitution contained the following provision related to executive clemency:

> He [the Governor] shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; **subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law**. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the general assembly, at its next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor.

Id. at 517 (citing Section 11, Article III) (emphasis added).

The Ohio Supreme Court first considered whether the regulations provision of the constitution authorized the legislature to, "prescribe a regulatory scheme governing the manner and procedure of applying for pardons." Id. at 519. The court had little trouble concluding that it did:

> We interpret the language of the "subject to" clause as providing the General Assembly with the authority to establish a regulatory scheme that includes prerequisites to the exercise of the Governor's power to grant pardons. Our interpretation is consistent with the purpose of the "subject to" clause, which was to provide the General Assembly with the authority to establish procedural safeguards against the granting of pardons. **The drafters of Section 11 were concerned that without such safeguards, the Governor might grant pardons without thorough consideration or might be too easily influenced by political factors to grant or deny clemency for reasons other than the merits of an inmate's claim.** See 1 Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio 1850-1851 (1851) 306-307. Consistent with the language and purpose of Section 11, the authority to regulate the application process must also include the authority to establish prerequisites to the Governor's exercise of the power to grant pardons. **To**

> **exempt the Governor from the "subject to" clause would allow the Governor to circumvent the procedural safeguards for which the clause was adopted, rendering the clause meaningless.**

Id. (emphasis added)

The Ohio Supreme Court then considered whether the restriction on the pardoning power extended to other forms of executive clemency. Noting that the "subject to" provision was in a clause pertaining only to pardons and that other forms of clemency were plainly not included, "the only plausible interpretation of Section 11 is the one we adopt today – the "subject to" clause provides authority for the General Assembly to regulate the application process for pardons and not commutations." Id. at 522. Such a limitation is not presented by the Iowa constitution, however, because the "subject to" provision of our constitution is plainly within the description of the entirety of the Governor's clemency power.

The Ohio Supreme Court then considered whether the Ohio General Assembly had exercised its authority under the constitution to regulate the Governor's pardon power. The statutory enactment provided:

> All applications for pardon, commutation of sentence, or reprieve shall be made in writing to the adult parole authority. Upon the filing of such application, or when directed by the governor in any case, a thorough investigation into the propriety of granting a pardon, commutation, or reprieve shall be made by the authority, which shall report in writing to the governor a brief statement of the facts in the case, together with the recommendation of the authority for or against the granting of a pardon, commutation, or reprieve, the grounds therefor and the records or minutes relating to the case.

Id. at 523. After excising the portion of the statute which applied to non-pardon clemency, the court had little hesitation concluding that compliance with the procedure was a necessary condition to the exercise of the Governor's power:

> [T]he General Assembly has chosen to use the word "shall" in R.C. 2967.07 three times in connection with the APA's role in the pardon application process. This indicates the mandatory nature of the APA investigation and of the entire APA involvement in the application process.
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> We hold that R.C. 2967.07 mandates that the APA investigation report and recommendation must be presented to the Governor before he may grant a pardon. This mandate includes those situations in which the Governor initiates the APA investigation.
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> The requirement of APA involvement by the General Assembly is permissible, because it is within the General Assembly's authority to legislate in aid of the [pardoning] power. The statute is meant to ensure that information about each person for whom a pardon is considered will be available to the Governor, so that an informed decision may be made. This is precisely the type of regulation "as to the manner of applying for pardons" contemplated by Section 11, Article III. The Governor's power to grant pardons is subject to this procedural mechanism, which requires the APA to investigate, recommend and report before the Governor may grant a pardon.

Id. at 525.

The Maurer case is instructive on many points. First, contrary to defendant's assertion, there are not two separate means for the Governor to grant clemency: one within the confines of Chapter 914 and one without. By giving life to the regulations clause of Article IV, Section 16, the Iowa legislature has properly confined the Governor's power. Not only has that power been confined, it has been confined to a substantially greater degree than in Ohio. The Iowa Governor must state with specificity his reasons for accepting or rejecting the recommendation of the board of parole and must notify certain classes of victims – far beyond what the Ohio Governor must do. The second lesson from Maurer is that actions taken without compliance with the statutory provisions are void, "[t]o find otherwise would be to read the 'subject to' clause out of [the constitution] when it is clear that that clause affects the *power* of the Governor to grant pardons." Id. (emphasis original)

The defendant also cites to Madigan v. Snyder, 804 N.E.2d 546 (Ill. 2004) as purporting to interpret the "subject to" provision in the Illinois constitution as having no impact on the Governor's authority to ultimately grant executive clemency. In Madigan the plaintiff sought to invalidate Illinois Governor George Ryan's grant of clemency to all inmates on Illinois' death row despite an utter lack of compliance with Illinois' statutory clemency application and investigation procedures. Although the grant of clemency was upheld in that case, defendant fails to discuss, as the Illinois Supreme Court did, the crucial differences between the original Illinois constitution (which closely mirrors Iowa's) and the 1970 constitution. The 1970 constitution, applicable to Governor Ryan's action provided, "The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore [sic] may be regulated by law." The court noted that the case would be substantially different had the constitution not been amended:

> By its plain language, article V, section 12, of the constitution merely allows the legislature to regulate the process for applying for executive clemency. It does not purport to give the legislature the power to regulate the Governor's authority to grant clemency. Further, the 1970 Illinois Constitution does not provide that the Governor's power to grant clemency is subject to the legislature's regulation of the application process, as did the 1870 constitution. Article V, section 13, of the Constitution of 1870 provided that: "**The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such regulations as may be provided by law relative to the manner of applying therefor**." (Emphasis added.) Ill. Const. 1870, art. V, § 13. The notable changes between the two constitutions were the addition of the phrase "on such terms as he thinks proper" and the deletion of the "subject to" language. Although petitioners might have had at least a plausible argument under the 1870 constitution (see People ex rel. Smith, 325 Ill. at 375, 156 N.E. 290 ("The only restriction imposed by the constitution on the power of the Governor to grant reprieves, commutations and pardons is that it shall be 'subject to such regulations as may be provided by law of applying therefor' ")), their contention must fail under the current constitution, which allows the legislature to regulate the application process but does not in any way restrict the Governor's power to act.

Id. at 552-53. (emphasis original) The 1970 Illinois constitution clearly grants that Governor the power to grant clemency "as he thinks proper." In stark contrast, the Iowa constitution limits our Governor, "subject to such regulations as may be provided by law." As described in Maurer this requires the Governor to act only upon compliance with the procedures established by the Legislature.

It should be noted that nothing in this mandamus action seeks to restrict the power of the Governor to grant clemency once the procedures described above have been complied with. The Legislature has expressly stated, "The power of the governor under the constitution to **grant** a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or restoration of the rights of citizenship shall not be impaired." Iowa Code § 914.1 (emphasis added).[4] Thus, even if the board of parole were to recommend, in the strongest possible terms, against clemency for a particular offender nothing in Iowa law would prevent the Governor from granting clemency. The Governor's ultimate grant of clemency is subject only to his or her own conscience and the power of the voters to express their dissatisfaction. The defendant's pleadings consistently confuse the ultimate decision of the Governor (which is unfettered by the constitution and statutes) and the procedural prerequisites to that decision.

This distinction was directly raised in Maurer and is critical to properly understand the issue which is before this court:

[4] Defendant claims this provision qualifies the application process and essentially excuses the Governor from compliance. To interpret the provision in such a manner would read one portion of the chapter as to make all other portions of the chapter meaningless. Such a reading is contrary to established principles of statutory interpretation which require the Court to read the provisions together in a manner which will give effect to all. Cedar Memorial Park Cemetery Association v. Personnel Associates, Inc., 178 N.W.2d 343, 347 (Iowa 1970); Olsen v. Jones, 209 N.W.2d 64, 67 (Iowa 1973); Northern Natural Gas Company v. Forst, 205 N.W.2d 692, 695, 696 (Iowa 1973); State v. McGuire, 200 N.W.2d 832, 833 (Iowa 1972); Isaacson v. Iowa State Tax Commission, 183 N.W.2d 693, 695 (Iowa 1971); Harnack v. District Court of Woodbury County, 179 N.W.2d 356, 361 (Iowa 1970); Krueger v. Fulton, 169 N.W.2d 875, 877 (Iowa 1969); Janson v. Fulton, 162 N.W.2d 438, 443 (Iowa 1968).

> The General Assembly is not authorized to prescribe substantive regulations concerning the Governor's discretion in the use of the clemency power, or in any way intrude on the discretion of the Governor. For example, the General Assembly could not, acting under the limited authority provided by Section 11, Article III, enact a statute requiring the Governor to accept the recommendation of the APA in the exercise of his clemency power. Likewise, the General Assembly could not enact a statute forbidding the Governor from exercising the clemency power in any specific class of cases…
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> Because the Governor has ultimate substantive discretion whether to grant or deny a pardon, there is no requirement that the Governor place any weight whatsoever on either the investigative report or the recommendation of the APA. **However, the power to disregard is not equivalent to the power to proceed without the procedural requirements first being fulfilled.**

Id. at 519-20, 525. (emphasis added).

II. Power of the Court to review the Governor's action

Plaintiff brings this action as authorized by Iowa Code § 661.8: "The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the county attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought." Defendant strenuously asserts that mandamus is not the appropriate remedy, the County Attorney is not the appropriate plaintiff, and indeed, there is no method for this Court to review the Governor's action.

In State of Iowa, ex rel. Johnson v. Allen, 569 N.W.2d 143, (Iowa 1997) the court noted the authority of the County Attorney to protect the public interest. The Jasper County Attorney brought an action against the mayor of Marengo seeking to compel the city to pay for police protection. The court found this to be a sufficient public interest:

> The mayor argues the Jasper County attorney does not have standing to pursue a mandamus action against the mayor for two reasons: (1) the county attorney does not have a sufficient interest in this matter to entitle him to pursue it on behalf of the State; and (2) neither the State nor the County is a real party in interest as required by Iowa Rule of Civil Procedure 2. We find no merit in either contention.

> Iowa's mandamus statute provides that an order of mandamus may be issued upon the petition "of the state by the county attorney, when the public interest is concerned." Iowa Code § 661.8 (emphasis added). This statute obviously contemplates the "ex rel." format used by the Jasper County attorney in this case.
>
> Of course, the county attorney's action is appropriate only when "the public interest is concerned." See id. We think the public interest is involved here because the taxpayers of Jasper County have a pecuniary interest in the mayor's compliance with section 372.4. As the situation now stands, Jasper County loses revenue by providing the City of Mingo with police protection without the benefit of an intergovernmental agreement under which the City agrees to pay for these services. Obviously, the County's resources could become even more strained if other cities in Jasper County were to follow the lead of Mingo and rely on the County for police protection. Because this mandamus action addresses a matter of public interest, we conclude the county attorney properly filed the mandamus petition.

Id. at 145. Although cited in passing, defendant utterly fails to discuss the impact of this case on his argument regarding the County Attorney's authority.

Defendant claims that mandamus, "is not a proper remedy to challenge the legality of an act that has already occurred." In support of this statement, defendant cites Woodbury County v. Talley, 147 Iowa 498, 123 N.W. 746 (1909). In Talley a county treasurer ruled as to the taxable nature of certain corporate property. The persons aggrieved by that decision did not seek any form of judicial review. They instead sought an action in mandamus to require the treasurer to reach the opposite conclusion. Rather than rejecting the mandamus action because the act had already occurred, the Court rejected it because of the method by which the action had been challenged:

> [I]t appears to us very clear that the conceded facts exclude the remedy by mandamus. While demanding that the treasurer act upon the facts and evidence produced before him and determine the question submitted to his decision, the petition shows that he has already acted and already made his decision. **What the appellants really ask the court to do is to command the treasurer to act again, to reverse and set aside the decision made by him, and to make another which shall accord with appellant's view of the law. Certainly this is not the office of mandamus.** If the treasurer has any discretion in such cases, if his decision is either judicial or quasi judicial, the order made by him may be

> erroneous, but it is not void, and his errors must be corrected by appeal where a right of appeal is given or by certiorari or other appropriate method of review. Mandamus does not contemplate the review of judicial acts or orders.

Id. at 749 (emphasis added).

Talley merely stands for the proposition that mandamus cannot be used to control the ultimate discretion exercised by the official – a use not sought by the State of Iowa in this petition. To describe Talley as holding that mandamus does not apply to acts which have already occurred is utterly misleading.

Equally misleading is defendant's claim that "mandamus is not a proper remedy to challenge the legal validity of an action" under Sith v. Civil Service Commission of City of Des Moines, 159 N.W.2d 806 (Iowa 1968). Upon review of the Sith decision it is clear that the Court merely held that mandamus was an improper vehicle to compel a civil service commission to make a determination as to which statute regulating public employees applied to the plaintiff. The plaintiff in Sith had sought an order in mandamus to compel the commission to determine that the provisions of law which said that he could only be discharged for cause superseded other provisions of law which mandated his retirement at age seventy. The Court found that there was no clearly established right with respect to the application of the conflicting statutes. That is, the requested mandamus order really sought to control the ultimate discretion of the commission – which statute applied to the plaintiff. The Court found that mandamus was not the correct means to resolve the statutory conflict and converted the action to one for a writ of certiorari. Id. at 808-09.

The only way Sith would be applicable to this dispute is if the County Attorney had sued, for example, the County Auditor seeking an order of mandamus compelling the

auditor to accept the provisions of Chapters 914 and 915 over the provisions of Executive Order No. 42 and not register voters who had their rights restored by the order. Mandamus clearly would not be the appropriate way to command the auditor to sort out the competing legal issues. It is not the auditor's statutory duty to resolve conflicts in constitutional and statutory law. Thus, there is no duty of the auditor's office which may be compelled through mandamus. Here, however, mandamus is sought against the official, the Governor, who is violating the law. This is exactly the purpose of mandamus – to compel the Governor to follow his statutory responsibilities. It is the duty of the Court in a mandamus action to review the duties of the office and determine whether the actions of the official are consistent with those duties.

In should also be noted that the mandamus cases discussed by the defendant dealt with private plaintiffs seeking redress of a private wrong. In this context the plaintiff is an elected official who is seeking redress of a wrong done to the public. Defendant's argument begs the question: in what cases does he think the legislature meant for the public interest to be vindicated through mandamus? To accept his argument means there is no entity which can bring the Governor before a Court, no matter how illegal Executive Order No. 42 may be.

III. Proper remedies for the Governor's actions

This petition was filed on June 30, 2005, seeking an order from the Court that the Governor not issue Executive Order No. 42 (or an order of like substance) and that the Governor not seek to grant restoration of rights without compliance with the procedures outlined in Chapters 914 and 915. At a minimum, this would prohibit the restoration of rights for individuals who have failed to make an application to the Governor for such

restoration. Additionally, for violent offenders the Governor would be required to give notice to registered victim and an opportunity for written comment prior to granting restoration of rights.

Due to the failure of the Governor to comply with the duties of his office the State of Iowa respectfully requests the Court find that the State of Iowa is entitled to summary judgment and the following relief in equity:

1. That Executive Order No. 42 and any subsequently issued monthly executive order as described the Affidavit of Thomas J. Vilsack (hereinafter referred to as "blanket restoration of rights orders") are void;

2. That the Governor shall not grant restoration of rights for an offender unless that offender has made application as provided in Iowa Code § 914.2;

3. That the Governor shall respond to all recommendations made by the board of parole as provided in Iowa Code § 914.4;

4. That the Governor, in the case of a violent offender, shall provide notice and opportunity for written comment by the registered victim as provided in Iowa Code § 915.19; and

5. That the Governor shall take reasonable steps to remediate the harm done by the issuance of blanket restoration of rights orders by doing all of the following:

a. The Governor shall cause notice to be sent to all county auditors and county clerks of court of the Court's finding that the blanket restoration of rights orders are void and that no person who purported to receive restoration of rights under such an order is a valid elector;

b. The Governor shall send to any offender known to the Governor to be in the class of persons covered by the scope of the blanket restoration of rights orders a copy of the Court's finding that the blanket restoration of rights orders are void and that no person who purported to receive restoration of rights under such an order is a valid elector.

c. To the extent to which the Governor provides a copy of any blanket restoration of rights order, whether by electronic or other means, the Governor shall cause to be contemporaneously provided a copy of the Court's finding that the blanket restoration of rights orders are void and that no person who purported to receive restoration of rights under such an order is a valid elector.

WHEREFORE, the State of Iowa respectfully requests the Court deny defendant's motion for summary judgment and grant plaintiff's cross motion for summary judgment as set forth above.

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Original filed.
Copy to: Julie Pottorff

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record, or the parties if unrepresented, at their respective addresses disclosed on the pleadings.

By:	_____	U.S. Mail	_____	Fax
	_____	Courthouse Mail	_____	Hand delivered
	_____	Certified Mail	_____	Other _____

Signature: _____
Date: _____