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

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[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.
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> 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.
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> 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