



Iowa General Assembly

2016 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

ELIGIBLE ELECTORS AND THE CONSTITUTIONAL DEFINITION OF INFAMOUS CRIME

Filed by the Iowa Supreme Court

June 30, 2016

Griffin v. Pate

No. 15-1661

http://www.iowacourtsonline.org/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160630/15-1661.pdf

Factual Background. Kelli Jo Griffin (Griffin) is a United States citizen, an Iowa resident, and is older than 18 years of age. Any similarly situated person is generally considered an eligible elector in Iowa, and therefore able to register to vote and to vote under the Iowa Constitution, however, the Iowa Constitution does disqualify individuals from being eligible electors if they have been convicted of an infamous crime or adjudged mentally incompetent to vote. Under Article II, section 5 of the Iowa Constitution, such individuals are disfranchised from the right to vote.

In 2008, an Iowa district court found Griffin guilty of a class “C” felony for delivering 100 grams or less of cocaine (delivery of a controlled substance). The court sentenced Griffin to a suspended term of incarceration and five years’ probation. At the time of Griffin’s 2008 conviction, former Governor Tom Vilsack’s Executive Order 42 was in effect, which provided for the automatic restoration of citizenship rights for felons following the successful discharge of their sentences. In January 2011, Governor Terry Branstad issued Executive Order 70, which immediately rescinded Executive Order 42. Since Executive Order 70 was issued, convicted felons who have fully discharged their felony sentences have been required to apply to have their citizenship rights restored by the governor under Article IV, section 16 of the Iowa Constitution. Griffin’s sentence was discharged in January 2013; she did not apply to have her citizenship rights restored by the governor.

In November 2013, Griffin registered to vote and voted a provisional ballot in a city election in Montrose, Iowa. Based upon her 2008 felony conviction, the Lee County Auditor determined that Griffin was disqualified from voting. Pursuant to Iowa Code section 48A.15, voter registration applicants attest to meeting all eligible elector requirements under signature and penalty of perjury. Griffin was charged with perjury under this law, but was later acquitted in a jury trial.

Procedural Background. In November 2014, Griffin filed a petition in district court against the Governor, the Secretary of State, and her County Auditor, asking the court to declare that her felony conviction did not render her ineligible to vote under the Iowa Constitution and seeking an injunction and a writ of mandamus that would recognize and protect her right to vote. After the Governor was dismissed from the suit, the district court found that Griffin’s 2008 conviction disqualified her as an elector and also rejected her additional claim that the citizenship rights restoration process violated her due process rights.

Issue on Appeal. Whether the felony crime of delivery of a controlled substance is an infamous crime under Article II, section 5 of the Iowa Constitution.

Holding. The Iowa Supreme Court (Court) held that all felonies under Iowa and federal law, including the felony crime of delivery of a controlled substance, are infamous crimes under Article II, section 5 of the Iowa Constitution.

Majority Opinion by Chief Justice Cady. Chief Justice Cady's majority opinion, joined by Justices Waterman, Mansfield, and Zager, held that any felony under Iowa law meets the standard of infamy under Article II, section 5 of the Iowa Constitution. The Court, while recognizing voting as a basic and fundamental right under the Iowa Constitution, reasoned that the constitutional history of Article II, section 5 of the Iowa Constitution, the text of that section, and the purpose of the infamy provision are consistent with a finding that all felonies are infamous crimes. The Court further reasoned that the Iowa Legislature has provided a clear community standard for infamy by passing legislation in 1994 that included all felonies within the statutory definition of an infamous crime contained in Iowa Code section 39.3, subsection 8.

The Court examined the history of infamous crimes as a legal concept, including common law and canon law traditions and the enactment of the Iowa Constitution, and concluded that the concept of infamy has long been associated with felony crimes. The Court also noted that, despite historical shifts in the nature of and public attitudes towards crime, the longstanding interpretation of Iowa's infamous crime provision had disqualified individual felons from the right to vote with little legislative intervention for over 150 years. The Court discussed the lack of substantive legislative changes in this area of law during that period and categorized the limited legislative enactments on the subject as an implementation of federal law and the codification of an accepted interpretation of the infamous crimes provision under the Iowa Constitution. The Court then detailed its own historical interpretations of infamy in relation to the right to vote, hold public office, give testimony at trial, and disqualify witnesses, and noted that the Court's historical standard applicable to the right to vote had established that until 2014, all crimes punishable by imprisonment in a state penitentiary were considered infamous crimes. In 2014, the Court abandoned this earlier punishment-based standard and held, in a limited context, that an infamous crime must: 1) be particularly serious, and 2) must "reveal that voters who commit the crime would tend to undermine the process of democratic governance through elections." The Court, however, did not provide a new standard for how lower courts should interpret the infamous crimes provision under the Iowa Constitution with respect to felonies.

In this case, the Court established a new standard that recognizes that all felonies are infamous crimes. The Court aligned this new constitutional standard both with the text of the constitutional provision, defining infamy in relation to community reputation, and with a legislative history that has provided the Court with a statutorily enacted prevailing community standard since 1994. According to the Court, this prevailing community standard for the definition of infamy was established in 1994 when the Iowa Legislature codified provisions that disqualified persons from registering to vote and from voting if they had been convicted of a felony under Iowa or federal law. The Court thereby implied that this legislatively enacted community standard reflects a societal judgment that allowing felons to vote would tend to undermine the process of democratic governance through the election process. The Court also opined that the prevailing community standard, without any legislative enactments to the contrary, has not shifted in the intervening years, and also suggested that a democracy is capable of redefining such a prevailing community standard through future legislative actions.

Dissent by Justice Wiggins. Justice Wiggins dissented, joined by Justices Hecht and Appel. Justice Wiggins opined that it is not the legislature's duty, but that of the Court, to interpret the meaning of the phrase "infamous crime" under Article II, section 5 of the Iowa Constitution and criticized the majority opinion for not fully analyzing that phrase under what Justice Wiggins categorized as the Court's previously robust framework for analyzing individual rights under the Iowa Constitution.

Dissent by Justice Hecht. Justice Hecht filed a separate dissent, joined by Justices Wiggins and Appel. Justice Hecht reasoned that for a crime to be considered infamous under Article II, section 5 of the Iowa Constitution, the crime that disqualifies a citizen from voting must have a "nexus to the electoral process." Challenging the majority opinion, Justice Hecht also restated a principle upheld by the Court in prior cases that the legislature is incapable of adding to or subtracting from constitutionally-based voter qualifications through statutory enactments. Unconvinced that Griffin's 2008 conviction rendered her a threat to fair elections, Justice Hecht then proceeded to analyze the relevant Iowa statutory provisions under a strict scrutiny analysis, opining that the statutory provisions are unconstitutional because they are not narrowly tailored to serve a legitimate purpose (protecting the integrity of the ballot box) as related to the infamous crimes provision of the Iowa Constitution.

Justice Hecht further opined that, under a strict scrutiny analysis, majoritarian, legislatively enacted preferences to disenfranchise felons cannot undermine the fundamental constitutional right of citizens to vote, unless that preference coincides with a compelling governmental interest. He argued that it is "fanciful at best" to conclude, based on her 2008 conviction, that allowing Griffin to vote would somehow undermine the electoral process or democratic governance. Justice Hecht further opined that disenfranchisement from the electoral process undermines a separate compelling interest in rehabilitating felons and reintegrating them into society.

Dissent by Justice Appel. Justice Appel filed a separate dissent, joined by Justices Wiggins and Hecht. Justice Appel also reasoned that Griffin should not be disqualified as an elector based upon Griffin's 2008 conviction. Justice Appel engaged in historical constitutional analyses to opine that: 1) the drafters of the Iowa Constitution intended for the Court and not the legislature to be the arbiter of the definition of an infamous crime under Article II, section 5 of the Iowa

Constitution, and 2) the meaning of an infamous crime under Article II, section 5 is not synonymous with a felony and any definition of infamous crime in the context of Article II, section 5 must have a nexus to the integrity of the election process. Justice Appel then concluded that Griffin's particular conviction had no nexus to the integrity of elections and that she should therefore be entitled to vote. Justice Appel concluded his dissent by noting various societal and administrative implications associated with upholding a definition of infamous crime based on felony convictions.

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