Iowa General Assembly

2014 Legal Updates

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DISQUALIFICATION FROM HOLDING PUBLIC OFFICE - INFAMOUS CRIMES

Filed by the Iowa Supreme Court
April 15, 2014

Chiodo v. The Section 43.24 Panel and Bisignano

No. 14-0553,
846 N.W.2d 845 (Iowa 2014)

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20140415/14-0553.pdf

Factual Background. On December 9, 2013, former State Senator Anthony Bisignano was convicted of operating while intoxicated (OWI), second offense. The district court sentenced Bisignano to incarceration for a term of not more than two years. The district court, however, suspended all but seven days of the incarceration and placed Bisignano on probation for the remainder of the sentenced term. On March 11, 2014, Bisignano filed an affidavit of candidacy with the Secretary of State for the Iowa Senate seat for District 17, located entirely within the City of Des Moines in Polk County. Former State Representative Ned Chiodo and Iowa Assistant Attorney General Nathan Blake also filed affidavits of candidacy for the Democratic nomination for the seat.

Procedural Background. On March 13, 2014, Chiodo filed an objection to Bisignano's candidacy under the claim that Bisignano was disqualified from holding public office based upon Bisignano's December 9, 2013, conviction. The Section 43.24(3) Panel, consisting of the Secretary of State, the Auditor of State, and the Attorney General, held a hearing related to the objection on March 19, 2014, and issued a denial of the objection on March 21, 2014. Chiodo subsequently filed for judicial review. The district court affirmed the panel's decision on April 2, 2014. Chiodo filed a notice to appeal the district court's ruling, and the Iowa Supreme Court (Court) granted an expedited review.

Issue. Whether the crime of OWI, second offense, constitutes an infamous crime under Article II, Section 5, of the Iowa Constitution.

Disposition. Three separate opinions were offered in this case with Chief Justice Cady writing for a three-justice plurality, Justices Mansfield and Waterman concurring specially, Justice Wiggins dissenting, and Justice Appel taking no part.

The plurality opinion and the special concurrence together hold that the crime OWI, second offense (an aggravated misdemeanor), does not constitute an infamous crime under Article II, Section 5, of the Iowa Constitution, that Bisignano is not disqualified from holding office as a result of the December 9, 2013, conviction, and that his name should be allowed to appear on the Democratic primary ballot.

Plurality Opinion by Chief Justice Cady. The plurality reached its opinion following a textual analysis of Article II, Section 5, of the Iowa Constitution, finding that such an analysis was lacking under the Court's precedents. The Court cited precedent in recognizing the requirement under Iowa Code §39.26 that a person must, among other requirements, be an eligible elector in order to qualify to hold public office. The Court did not include in its analysis the qualification requirements under Article III of the Iowa Constitution.

Article II, Section 5, of the Iowa Constitution disqualifies certain persons from the privileges of being an elector, including persons adjudged mentally incompetent to vote and persons convicted of any infamous crime. The plurality considered prior cases in which it held that an infamous crime included crimes punishable by imprisonment in a penitentiary. A conviction for OWI, second offense, as an aggravated misdemeanor, is a crime punishable by imprisonment.

The plurality, however, found that its own precedents—dating back to 1916—failed to engage in a textual analysis of Article II, Section 5, and felt obligated to engage in such an analysis in deciding this case. The plurality found that the language of Article II, Section 5, describing the disqualification of otherwise eligible electors was based upon the conviction of a person for a particular offense rather than upon the term of punishment associated with such a conviction. The plurality reasoned that Article II, Section 5, was created to serve a regulatory function to protect the democratic process, rather than as a punitive measure intended to expand criminal punishment. The plurality therefore overruled the Court's prior precedent that "infamy," under the Iowa Constitution, was based merely upon a sentence to imprisonment in a penitentiary.

Following its textual analysis, the plurality turned to statutory and historical analyses to construct a new understanding of Article II, Section 5. The plurality looked to Iowa Code §39.3(8) which, since 1994, has defined infamous crime to mean a felony under Iowa or federal law. The plurality held that the statutory definition could be informative to the Court's analysis, but that a statute could not add to or subtract from the qualification of voters that are contained within the Iowa Constitution. The plurality stopped short of declaring Iowa Code §39.3(8) unconstitutional.

In its historical analysis, the plurality considered language in the proposed 1844 Iowa Constitution, the 1846 Iowa Constitution, and an 1839 Iowa territorial statute, as well as certain constitutional developments in other states. The plurality held that if the drafters of the Iowa Constitution intended for Article II, Section 5, to impose the restriction on the basis of a felony conviction they would have used that term, which appears elsewhere in the Iowa Constitution. After asserting that Article II, Section 5, must serve a regulatory rather than a punitive function, the plurality held that any definition of infamous crime must be narrowly tailored to promote the compelling governmental interest of protecting the integrity of the electoral process. The plurality also concluded that any definition of "infamous crime" under the Iowa Constitution must only include a felony, stating that even misdemeanor crimes that directly compromise the electoral process could not be considered an infamous crime.

The plurality held that the crime of OWI, second offense, does not constitute an infamous crime under Article II, Section 5, of the Iowa Constitution, that Bisignano is not disqualified from holding office, and that his name should be allowed to appear on the Democratic primary ballot.

Special Concurrence by Justice Mansfield joined by Justice Waterman. Justices Mansfield and Waterman agreed with the plurality that Bisignano should not be disqualified from running for a seat in the Iowa Senate. The basis for Justice Mansfield's special concurrence, however, is his agreement with the Section 43.24 Panel and the district court that "felonies and only felonies" are infamous crimes. Justice Mansfield's resolution of the case depends upon the fact that Article II, Section 5, was repealed and reenacted in 2008. The 2008 amendment repealed and replaced the entire section, but the amendment only changed language in Article II, Section 5, that had disqualified potential electors if the person was an "idiot" or an "insane person" and replaced that language with a requirement that a person be disqualified as an elector if the person is "adjudged mentally incompetent to vote."

Justice Mansfield stated that when the people of Iowa adopted the amendment in 2008 to repeal and replace Article II, Section 5, they in effect ratified prior interpretations by the Court, the General Assembly, and the public that an infamous crime constituted a felony and only a felony. He argued that because the 2008 amendment only changed prior language related to the mental capacity of individuals and did not address the then understood definition of an infamous crime, that the people of Iowa thereby ratified the previously understood interpretation of that language. Justice Mansfield's special concurrence also criticized the plurality for unnecessarily introducing uncertainty into the electoral process, for inviting future voting rights litigation, and for engaging in "an odd mix of half-hearted originalism and excessive fealty to a court decision from Indiana."

Dissent by Justice Wiggins. Justice Wiggins, in his dissent, stated that the Court should uphold its own precedent and continue to hold to a definition of infamous crime that would include any crime which is punishable by confinement in prison. Justice Wiggins opined that Bisignano should no longer be entitled to the rights of an eligible elector on the basis of Bisignano's December 9 conviction. Justice Wiggins also noted the dangers of eliminating the Court's own bright-line rule to instead pursue a factor analysis that would create uncertainty among potential electors and elections administrators alike. Justice Wiggins, however, agreed with the plurality in the belief that "the legislature cannot write a constitutional definition of 'infamous crime' by its enactment of Iowa Code §39.3(8)." Justice Wiggins further asserted that the plurality "should not use the legislature's pronouncement in Iowa Code §39.3(8) to control [the Court's] constitutional duty to interpret the Iowa Constitution."

Implications. Based upon the varied opinions in this case, the Court appears divided on a number of issues that hold potential impacts for legislative action and how the Court will continue to analyze provisions of the Iowa Constitution. The plurality's holding that the later enacted statutory definition of an "infamous crime" in Iowa Code §39.3(8) can be informative to the Court's analysis of Article II, Section 5, is contrasted by the dissent's assertion that such a tact is nothing less than an abrogation of the Court's constitutional duty; the approach of the special concurrence, which grants Iowa Code §39.3(8) significance by means of a later constitutional amendment that maintains the "infamous crime" reference, is also a notable one. Indeed, under the special concurrence's analysis it could be beneficial to repeal and replace entire sections or articles of the Iowa Constitution to crystalize current interpretations of such provisions. Under such an analysis, repealing and replacing an entire section or article, while perhaps being easier to read on a ballot, may have a broader impact than intended in contrast to the General Assembly only replacing or striking a word or phrase.

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