

SUPREME COURT NO. 15-1661
POLK COUNTY CASE NO. EQCE077368

IN THE SUPREME COURT OF IOWA

KELLI JO GRIFFIN,

Petitioner-Appellant,

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-Appellants.

*APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HONORABLE ARTHUR E. GAMBLE*

**FINAL BRIEF* OF AMICUS CURIAE
POLK COUNTY AUDITOR JAMIE FITZGERALD
IN SUPPORT OF PETITIONER-APPELLANT**

**CONDITIONALLY FILED*

Gary Dickey
DICKY & CAMPBELL LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@dickeycampbell.com

CERTIFICATE OF FILING

I, Gary Dickey, hereby certify that I filed this brief with the Clerk of the Supreme Court via EDMS on January 28, 2016.



Gary Dickey

Counsel for Amicus Curiae

DICKEY & CAMPBELL LAW FIRM, PLC

301 East Walnut St., Ste. 1

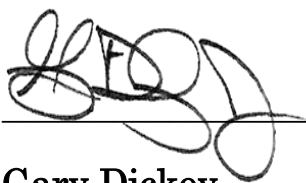
Des Moines, Iowa 50309

PHONE: (515) 288-5008 FAX: (515) 288-5010

EMAIL: gary@dickeycampbell.com

CERTIFICATE OF SERVICE

I, Gary Dickey, hereby certify that on January 28, 2016, I served a copy of the attached brief on all other parties to this appeal EDMS:



Gary Dickey

Counsel for Amicus Curiae

DICKEY & CAMPBELL LAW FIRM, PLC

301 East Walnut St., Ste. 1

Des Moines, Iowa 50309

PHONE: (515) 288-5008 FAX: (515) 288-5010

EMAIL: gary@dickeycampbell.com

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INTEREST OF AMICUS CURIAE

Amicus curiae Jamie Fitzgerald is Polk County Auditor. As Auditor of Polk County, the perspective and position of this Proposed Amicus provides specialized information relevant to the procedures the Court is considering. The Proposed Amicus is directly responsible for the management of the election process for roughly 270,500 Iowa voters. The outcome of this action will significantly impact the Auditor's ability to serve as chief election officer for Polk County, Iowa, and to execute his duties in that role. The Proposed Amicus' position also clarifies that the positions articulated by other *Amici* ISAC and ICAA are not ubiquitous among relevant election administrators.

ARGUMENT

I. Introduction

This Court should find in favor of the Appellant and recognize that her nonviolent drug crime does not disqualify her from voting for life. Instead, now that she has discharged her criminal sentence – in her case, probation – this Court should recognize that she has the ability to register to vote and to vote in elections in Iowa because she was not convicted of an “infamous crime.” Iowa Const. art. II, section 5.

II. This Court should narrowly construe the Iowa Constitution to effectuate broad access to voting in our state.

This is an issue of paramount importance to the Auditor because it impacts the lifetime voting rights of thousands of Iowans in his county. Voting is a fundamental, constitutionally protected right. *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). The right to vote is constitutionally enshrined and cannot be abridged by act of the Iowa General Assembly. *See Coggeshall v. City of Des Moines*, 117 N.W. 309, 311-12 (Iowa 1908).

Thus, this case is critically important to the people of Iowa and the people of Polk County and the officials elected to represent them. Those officials, particularly those elected to facilitate elections, (namely, county auditors and the Secretary of State) have a duty to facilitate voting in our state by qualified electors. For approximately 100 years, voters in Iowa have been wrongly disenfranchised by the misappropriation of a federal standard announced in *Ex Parte Wilson*, a case that actually interpreted the Grand Jury Indictment Clause of the Fifth Amendment, not the meaning of “infamous crime” as used by the Iowa Constitution, to disqualify voters permanently from voting in our state. *See Ex Parte Wilson*, 114 U.S. 417

(1885); *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014) (plurality op.).

This case represents the first opportunity for the Court to correct 100 years of bad case law denying voting rights on the basis of any felony conviction. (*See* Appellant Brief *passim*.) This Court should reverse the district court below and articulate a rule which disqualifies people only if they have been convicted of a felony that is truly infamous under the Iowa Constitution. As argued persuasively by Mrs. Griffin, this definition does not include nonviolent drug crimes such as the Petitioner's under any historical standard. (*Id.*)

Whatever this Court decides, Polk County will feel the impact of the decision more than other counties: Polk County is not only the most populous county in Iowa, it is the most racially diverse. *See* United States Census Bureau, *Polk County Iowa QuickFacts*, available at <http://quickfacts.census.gov/qfd/states/19/19153.html>. Moreover, the harm caused by widespread disenfranchisement to individuals, families, and communities is most severely felt in diverse counties such as Polk County, leading to geographical, socio-economic, and racial swaths of disenfranchised neighborhoods. (Br. of Amicus League of Women Voters at 11-22; Br. of NAACP at 13-27.) *See generally* The Sentencing Project, *Iowa*

and *Felony Disenfranchisement* (2005), available at

http://www.sentencingproject.org/doc/publications/fd_iowa.pdf. The Court should recognize these harms in looking to adopt the historical definition of the infamous crimes clause most in line with the Iowa Constitution, and should adopt the Affront to Democratic Governance Standard which disqualifies individuals based on the fewest specific felonies. (Appellant's Br. at 20-30.)

III. An Auditor's Duty is to Facilitate Voting by Qualified Iowans.

Ease of election administration is not the most important concern of a county auditor. The most important concern of the Auditor as commissioner of elections is ensuring that qualified Iowa voters can access the ballot.

As Auditor Fitzgerald understands their argument, amicus ISAC asks this Court to adopt a bright line test, while remarking that the felon-misdemeanor distinction is a bright line, rather than specifically endorses any particular test. (ISAC Amicus Br. at 2.) Auditor Fitzgerald notes that the Affront to Democratic Governance Test would also provide a bright-line, which would allow auditors to know which specific felonies resulted in disenfranchisement. (Appellant Reply Br. at 25.) However, as the plurality in *Chiodo* held, the convenience of county auditors is not the primary concern of this case. Nor is it the primary concern of county auditors.

Rather, the auditors' mandate — the auditors' first duty in holding the office— is the facilitation of elections where all qualified Iowans who properly register and vote are counted so as to ensure the exercise of the democratic process.

As this Court stated in the plurality decision in *Chiodo*, “If the words of the constitution do not support a bright line rule neither can we. . . Ease of application does not justify a rule that disenfranchises otherwise eligible voters.” *Chiodo*, 846 N.W.2d at 853 (plurality op.).

To the extent the Court considers deciding this case merely on policy grounds for administrative ease, a rule whereby no crimes are found to be infamous is the brightest line and one that affords the greatest protection of constitutional rights. Such a policy reduces recidivism, strengthens families and communities, and garners wide public support. (See *Br. of League of Women Voters*, passim.) But to the extent that this Court adopts a precise constitutional test based on the history of the Iowa Constitution and finds that some crimes are infamous, this Court should narrowly construe that clause to disqualify the fewest people, and err on the side of the protection of voting rights.

IV. The Tests Proposed by Mrs. Griffin are Possible to Administer, and Moreover, the Importance of Assuring Fundamental Voting Rights is Paramount to Administrative Convenience.

Arguments made by the Appellees in defending the state's disenfranchisement policies are not persuasive enough to justify the lifetime restriction on voting by Mrs. Griffin or thousands of Auditor Fitzgerald's constituents, whose constitutional voting rights he has sworn to uphold. Other states have rules in place that disqualify for some but not all felony offenses, and Iowa could implement such a policy as well. *See* National Conference of State Legislatures, *Felon Voting Rights* (Dec. 2, 2015); American Civil Liberties Union, *State Criminal Re-enfranchisement Laws (Map)*, available at <https://www.aclu.org/map/state-criminal-re-enfranchisement-laws-map>. For example, eight states disqualify for some specific felonies but not all felonies. *Id.* Even more states restore voting rights at various stages after conviction. *Id.*

Mrs. Griffin's brief spelled out a number of administrative solutions—from a carefully construed and precise rule by this Court specifying which felonies are infamous, to training of poll-workers. (*See* Appellant Br. at 55-56.) The system could even be set up to be automated for auditors. Currently, Iowa maintains a list of persons disqualified by virtue of conviction of a felony, as well as a list of those whose rights have been


individually restored by the Iowa Governor. Unfortunately, these lists have not been without error. The idea that reveals that the current rule is a bright line is a myth. *See, e.g.* GOP official: Mistakes on elections list wrongly barred three Iowans from voting, Des Moines Register, Jan. 29, 2014, available at

<http://blogs.desmoinesregister.com/dmr/index.php/2014/01/29/gop-official-mistakes-on-elections-list-wrongly-barred-three-iowans-from-voting>.

However, it's easy to conceive of a similar database that disqualifies based on conviction of specific felonies rather than all felonies, which would likely be easier to administer, if anything, because fewer disqualifying offenses will mean thousands fewer disqualified Iowans on the list to begin with.

CONCLUSION

For the reasons stated in this brief, the Polk County Auditor, who oversees elections in Iowa's most populous and most diverse county, urges this Court to reverse the district court below. The Amicus respectfully urges the Court to find that Mrs. Griffin, and thousands of Iowa voters in Polk County with non-infamous felony convictions, are qualified voters who may register and vote in our state. Facilitating voting by those persons is not an administrative burden any more than the myriad other provisions that county auditors and poll-workers must contend with. Certainly, it is not



insurmountable. Moreover, the Amicus Auditor Fitzgerald welcomes the privilege of facilitating the elections in Polk County in a manner which reverses course on 100 years of faulty disenfranchisement and allows all those qualified to participate in our democracy.

COST CERTIFICATE

I hereby certify that the cost of printing this application was \$0.00 and that that amount has been paid in full by the undersigned.


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Gary Dickey

Counsel for Amicus Curiae
DICKY & CAMPBELL LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@dickeycampbell.com