

IN THE SUPREME COURT OF IOWA

No. 15-1661

KELLI JO GRIFFIN,

Petitioner-Appellant,

v.

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-Appellees.

On Appeal from the District Court for Polk County
The Honorable Arthur E. Gamble, Chief District Judge
Fifth Judicial District of Iowa, Case No. EQCE 077368

**Brief of Amicus Curiae
The Iowa League of Women Voters**

Mark McCormick, Esq., AT0005111
BELIN MCCORMICK, P.C.
666 Walnut Street, Suite 2000
Des Moines, IA 50309-3999
Telephone: 515-283-4615
Facsimile: 515-558-0615
mmccormick@belinmccormick.com

Carmen Beauchamp Ciparick, Esq.
GREENBERG TRAURIG, LLP
200 Park Avenue
New York, NY 10166
Telephone: 212-801-9200
Facsimile: 212-801-6400
ciparickc@gtlaw.com

Myrna Pérez
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW¹
161 Avenue of the Americas
New York, NY 10013
Telephone: 646-292-8310
PerezM@mercury.law.nyu.edu

*Attorneys for Amicus Curiae Iowa
League of Women Voters*

¹ This brief does not purport to represent the position of NYU School of Law.

CERTIFICATE OF FILING

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

CERTIFICATE OF SERVICE

I, Mark McCormick, hereby certify that on January 28, 2016, I served a copy of the attached brief on the counsel of record for all other parties to this appeal via EDMS:

Michael P. Short
Lee County Attorney
25 North 7th St.
PO Box 824
Keokuk, IA 52632
Attorney for Respondent Denise Fraise

Jeffrey Thompson
Meghan Gavin
Iowa Attorney General's Office
1305 Walnut St.
Des Moines, IA 50319
Attorneys for Respondent Paul Pate

Rita Bettis (AT0011558)
American Civil Liberties Union of Iowa Foundation
505 Fifth Avenue, Ste. 901
Des Moines, IA 50309-2316

Dale E. Ho
Julie A. Ebenstein
American Civil Liberties Union Voting Rights Project
125 Broad Street
New York, NY 10004
Attorneys for Petitioner



Mark McCormick

Mark McCormick, Esq., AT0005111

BELIN MCCORMICK, P.C.

666 Walnut Street, Suite 2000

Des Moines, IA 50309-3999

Telephone: 515-283-4615

Facsimile: 515-558-0615

mmccormick@belinmccormick.com

TABLE OF CONTENTS

IDENTITY AND INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. IOWA’S DISENFRANCHISEMENT POLICY RESTRICTS THE VOTING RIGHTS OF THOUSANDS OF IOWANS.....	7
II. IOWA’S INTERESTS ARE BEST SERVED BY BROAD RESTORATION OF VOTING RIGHTS FOR PERSONS IN IOWA COMMUNITIES	11
A. Restoring The Right To Vote Upon Release From Prison Strengthens Iowa Communities.....	11
1. Voting Enhances Political Participation	11
2. The Right to Vote Strengthens Families and Communities	13
3. Restoration of Voting Rights Improves Public Safety.....	15
4. Iowa’s Disenfranchisement Policy Disproportionately Affects Iowa Minorities	19
B. Iowa’s Disenfranchisement Policy Is Unrelated to Its Penological Interests.....	23
CONCLUSION	26
COST CERTIFICATE	28
CERTIFICATE OF COMPLIANCE	28

TABLE OF AUTHORITIES

Cases

<i>Allison v. Vilsack</i> , No. EQCV016165	1
<i>Chiodo v. Section 43.24 Panel</i> , 846 N.W.2d 845 (Iowa 2014)	4, 6, 7, 11
<i>City of Osceola v. Blair</i> , 231 Iowa 770 (1942)	26
<i>Devine v. Wonderlich</i> , 268 N.W.2d 620 (Iowa 1978)	4
<i>Iowa Fed’n of Labor, AFL-CIO v. Iowa Dep’t of Job Serv.</i> , 427 N.W.2d 443 (Iowa 1988)	5
<i>McLaughlin v. City of Canton</i> , 947 F. Supp. 954 (S.D. Miss. 1995)	13
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	4, 11
<i>Santi v. Santi</i> , 633 N.W.2d 312 (Iowa 2001)	4, 6
<i>Snyder v. King</i> , 958 N.E.2d 764 (Ind. 2011)	6
<i>State v. Ahitow</i> , 544 N.W.2d 270 (Iowa 1996)	7
<i>State v. Iowa Dist. Court ex rel. Story Cty.</i> , 843 N.W.2d 76 (Iowa 2014)	5
<i>State v. Seering</i> , 701 N.W.2d 655 (Iowa 2005)	4
<i>Trop v. Dulles</i> , 356 U.S. 86 (1957)	16, 24
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	5
<i>Varnum v. Brien</i> , 763 N.W.2d 862 (2009)	4, 6, 23, 25

<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886).....	4
---	---

Statutes

Iowa Code § 4.6	5
Iowa Code § 39.3(8).....	2, 7
Iowa Code § 720.2	9
Iowa Code § 901.5	24

Constitutional Provisions

Iowa Const. art. I, § 9.....	4
Iowa Const. art. II, § 5.....	6, 7

Executive Orders

Iowa Exec. Order 42	2, 8, 21
Iowa Exec. Order 70	2, 8
Kentucky Exec. Order 2015-871	8

Other Authorities

BLACK’S LAW DICTIONARY (10th ed. 2014)	12
BARBARA A. HUDSON, UNDERSTANDING JUSTICE: AN INTRODUCTION TO IDEAS, PERSPECTIVES AND CONTROVERSIES IN MODERN PENAL THEORY (Open University Press, 2d ed. 2003).....	24
JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 25 (2006).....	17, 25
WILLIAM STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE (2012)	18
CHRISTOPHER UGGEN ET AL., <i>Less Than the Average Citizen: Stigma, Role Transition, and the Civic Reintegration of Convicted Felons</i> , <i>in</i> AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 258 (Shadd Maruna & Russ Immarigeon eds., 2004).	16

Melanie Bowers & Robert R. Preuhs, <i>Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Nonfelons</i> , 90 SOC. SCI. Q. 3 (Sept. 2009)	20
Alec C. Ewald, “Civil Death”: <i>The Ideological Paradox of Criminal Disenfranchisement Law in the United States</i> , 2002 WIS. L. REV. 1045 (2002)	12
Kent Greenwalt, <i>Punishment</i> , 74 J. CRIM. L. & CRIMINOLOGY 343 (1983)	24
Guy Padraic Hamilton-Smith & Matt Vogel, <i>The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism</i> , 22 BERKELEY LA RAZA L.J. 407 (2012)	12, 16, 17
John Laub et al., <i>Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process</i> , 63 AM. SOC. REV. 225 (1998)	15
Paul S. Martin, <i>Voting’s Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money</i> , 47 AM. J. OF POL. SCI. 122 (Jan. 2003)	15
Arman McLeod et al., <i>The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform</i> , 11 VA. J. SOC. POL’Y & L. 66 (2003)	13
Eric Plutzer, <i>Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood</i> , 96 AM. POL. SCI. REV. 41 (March 2002)	14
Robert R. Preuhs, <i>State Felon Disenfranchisement Policy</i> , 82 SOC. SCI. Q. 4 (Dec. 2001)	22
Miles Rapoport & Jason Tarricone, <i>Election Reform’s Next Phase: A Broad Democracy Agenda and the Need for a Movement</i> , 9 GEO. J. ON POVERTY L. & POL’Y 379 (2002)	12
Jeffrey Reiman, <i>Liberal and Republican Arguments Against the Disenfranchisement of Felons</i> , CRIM. JUST. ETHICS (Winter/Spring 2005)	19

Christie Sennott & John F. Galliher, *Lifetime Felony
Disenfranchisement in Florida, Texas, and Iowa: Symbolic and
Instrumental Law*, 33 SOC. JUST. J. 79 (2006) 10, 22

Christie Visher & Jeremy Travis, *Transitions from Prison to
Community: Understanding Individual Pathways*, 29 ANN. REV.
SOC. 89 (2003)11

IDENTITY AND INTEREST OF AMICUS CURIAE

The League of Women Voters of Iowa (“LWVIA”) is a nonpartisan political organization for women and men, which encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. LWVIA is an affiliate of the national League of Women Voters (“LWVUS”), founded by Iowan Carrie Chapman Catt in 1919. LWVUS has helped millions of citizens become informed participants in our democratic system of government, and was instrumental in the struggles to pass the Voting Rights Act of 1965, the Voting Rights Act Amendments of 1982, and the National Voter Registration Act of 1993.

The LWVIA believes unequivocally that the right of every citizen to vote is fundamental and a cornerstone of our democracy. In its role as the primary voting rights advocacy organization for the state of Iowa, LWVIA works to educate the public about the status of their voting rights under Iowa law through public education initiatives and voter registration drives, and to mitigate the negative effects of Iowa’s disenfranchisement policy. When registering voters in their communities, both the Des Moines Metro and Dubuque LWVIA members have experienced voter confusion and apathy as a result of this policy.

LWVIA has previously participated as *amicus curiae* on behalf of Governor Thomas Vilsack in *Allison v. Vilsack*, No. EQCV016165, in which the District

Court of Iowa rejected a challenge to then-Iowa Governor Vilsack’s authority to restore the voting rights of citizens pursuant to Executive Order 42.

SUMMARY OF ARGUMENT

A law that impedes the exercise of a fundamental right, such as the right to vote, must be narrowly construed. Such a law must fail when the burden it places on that fundamental right is not the least restrictive means to serve a compelling state interest. Iowa’s current disenfranchisement policy² impedes the right to vote of an entire class of Iowa citizens, including those who completed sentences for felony convictions of any degree post-2011.

Iowa’s policy is not tailored to serve its stated interests in protecting the integrity of the ballot and ensuring the orderly conduct of elections. No empirical evidence exists that felony disenfranchisement laws result in fewer incidents of voter fraud, corruption, or other election-related offenses, or disorder at the polls. Instead, studies have repeatedly shown that Iowa’s goals of promoting civic responsibility and serving as gatekeeper of the democratic process are better served by providing the vote to as many citizens living and working in the community as possible. Restoring the right to vote leads to higher rates of societal reintegration,

² Throughout this brief, *amicus curiae* will refer to all statutes, regulations, forms and procedures that currently bar Iowa citizens permanently from voting, including Iowa Code Section 39.3(8) and Executive Order 70, collectively, as “Iowa’s disenfranchisement policy.”

as the ability to effect change within the political system promotes self-worth and community involvement.

Similarly, voting by persons returning to our communities from incarceration is linked to lower rates of recidivism and improvements in public safety. Disenfranchisement because of past criminal convictions negatively impacts communities of color in general and, in particular, African American communities, with a disproportionate effect on African American men. Voting restoration allows individuals, their families, and entire communities to reconnect with the political system and view their relationship with the state as engaged, rather than adversarial.

Moreover, Iowa's disenfranchisement policy has imposed substantial burdens upon its citizens. These burdens are borne by the 20,000 Iowa citizens—and counting—who are active members of society yet prohibited from casting a ballot, and by the additional Iowa citizens and communities who experience *de facto* disenfranchisement as a ripple effect of this policy.

These are current and pressing issues in today's society. The LWVIA submits this brief as *amicus curiae* to urge the Court to find that Iowa's current disenfranchisement policy is an unconstitutional burden on the fundamental voting rights of Iowa citizens, or, under well-settled principles of statutory construction,

to narrowly construe Iowa’s policy to restrict the voting rights of the smallest number of Iowa citizens as needed to accomplish other valid state goals.

ARGUMENT

Iowa has long recognized the right to vote as a fundamental right. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014), *as corrected* (Apr. 16, 2014) (“[v]oting is a fundamental right in Iowa, indeed the nation”); *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978); *see also Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (“[voting].... is regarded as a fundamental political right, because [it is] preservative of all rights”). The Iowa Constitution restricts the state from interfering with fundamental rights. Iowa Const. art. I, § 9; *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005). Any infringement of a fundamental right must be “carefully and meticulously scrutinized.” *Chiodo*, 846 N.W.2d at 856 (*quoting Devine*, 268 N.W.2d at 623).

A law that impedes a fundamental right is infirm where, as here, it is not “narrowly tailored to serve a compelling government interest.” *Santi v. Santi*, 633 N.W.2d 312, 317–18 (Iowa 2001). When interpreting a law that impacts a fundamental right, the Court may consider its societal impacts. *See Varnum v. Brien*, 763 N.W.2d 862, 881 (2009) (citing 2 John W. Strong, *McCormick on Evidence* § 328, at 369 (5th ed. 1999)) (“[J]udicial decision-making in the context

of constitutional issues” may require courts to analyze facts beyond those relating to the parties and their particular circumstances, including “social, economic, political, or scientific facts.”). Such examination helps the court determine whether—and to what extent—the state is justified in burdening citizens’ rights, and assists in the court’s efforts to “adapt[] [the] law to a volatile social-political environment” and analyze “whether there exist circumstances which constitutionally either legitimate the exercise of legislative power or substantiate the rationality of the legislative product.” *Id.* Moreover, if a statute (or constitutional provision³) is ambiguous, a court may consider, among other things, “[t]he consequences of a particular construction.” Iowa Code § 4.6.

Constitutional principles further dictate that a court must narrowly construe laws that impinge on fundamental rights. *State v. Iowa Dist. Court ex rel. Story Cty.*, 843 N.W.2d 76, 85 (Iowa 2014) (“[T]he proper course in the construction of a statute may be to steer clear of ‘constitutional shoals’ when possible”); *see also Troxel v. Granville*, 530 U.S. 57, 67 (2000) (holding that a grandparent visitation statute impermissibly impinged on the mother’s fundamental right to make decisions regarding her children, noting that the “Washington Supreme Court had the opportunity to give [the statute] a narrower reading, but it declined to do so”).

³ Constitutional provisions generally are subject to the same rules of construction as statutes. *Iowa Fed’n of Labor, AFL-CIO v. Iowa Dep’t of Job Serv.*, 427 N.W.2d 443, 445 (Iowa 1988) (citing 16 Am.Jur.2d *Constitutional Law* § 90, at 416–17 (1979)).

Courts should “avoid reading . . . conflict into [a] Constitution unless the document itself clearly requires” it. *Snyder v. King*, 958 N.E.2d 764, 781 (Ind. 2011).

This case involves the burden that the state of Iowa may place on its citizens’ fundamental right to vote. The Court, therefore, may look to “constitutional facts,” including public policy arguments, for guidance. *See Varnum*, 763 N.W.2d at 881, 898–906 (analyzing “all of the material tendered by the parties” to assist in the review of the constitutionality of the civil marriage statute, including public policy arguments); *Santi*, 633 N.W.2d at 318–19 (considering whether the law “strengthen[ed] extended familial bonds,” or caused “family disruption” in examining constitutionality of grandparent visitation statute). Indeed, in subjecting Iowa’s lifetime ban to “careful[] and meticulous[]” scrutiny, the societal implications that flow from the state’s manner of restriction are of paramount importance. *Chiodo*, 846 N.W.2d at 856.

Even if upheld, Iowa’s disenfranchisement policy should be construed narrowly because it burdens a fundamental right. The constitutionality of Iowa’s policy turns on the legislative and executive definition of the term “infamous crime,” as that term is provided in the Iowa Constitution. *See* Ruling on Motions for Summary Judgment dated September 25, 2015, at 1–2 (“Ruling”) (APP 275–76); *see also* Iowa Const. art. II, § 5. This Court has noted that “[a]ny definition of the phrase ‘infamous crime’ . . . is not easy to articulate.” *Chiodo*, 846 N.W.2d at

851, 856; *see also id.* at 860 (Mansfield, J., specially concurring) (“[I]nfamous is rather vague language. It does not cry out with specificity.”). Clearly, reasonable minds may differ as to the meaning of “infamous crimes.” *State v. Ahitow*, 544 N.W.2d 270, 272 (Iowa 1996) (“Words are ambiguous if reasonable persons can disagree as to their meaning”) (quotation omitted). Because the term “infamous crimes” is ambiguous, the Court should consider the political and societal consequences of Iowa’s disenfranchisement policy upon the citizens of the state.

I. IOWA’S DISENFRANCHISEMENT POLICY RESTRICTS THE VOTING RIGHTS OF THOUSANDS OF IOWANS

This case challenges the Iowa General Assembly’s and Iowa Governor Terry Branstad’s interpretation of the Iowa Constitution’s provisions regarding the fundamental right to vote. As set forth more fully in Appellant’s brief, while the Iowa Constitution broadly guarantees the right to vote, it permits the state to restrict the voting rights of persons convicted of “infamous crime[s].” Iowa Const. art. II, § 5. The Iowa Constitution does not define “infamous crime.” The Iowa General Assembly purported to define “infamous crime” in Iowa Code Section 39.3(8) as “a felony as defined in section 701.7, or an offense classified as a felony under federal law.” However, the ability of the General Assembly to define “infamous crime” recently was called into question in *Chiodo*. 846 N.W.2d at 855 (noting “it appears the drafters at our 1857 constitutional convention intended to deprive the legislature of the power to define infamous crimes. . . .”).

Prior to 2005, the Iowa Code’s definition of “infamous crime,” as interpreted by the Court, resulted in Iowa being one of a handful of states that continued to impose a “lifetime” voter disenfranchisement ban (dating back to 1846) on people with criminal convictions in their past. On July 4, 2005, Executive Order 42 implemented a system of automatic reinstatement of voting rights to all Iowa citizens who discharged criminal sentences, including all citizens who had discharged sentences prior to the Order’s signing date. (APP 84–85). That Order restored voting rights to more than 100,000 individuals and resulted in an estimated 81 percent reduction in the overall number of disenfranchised Iowans.⁴

On the day he took office in 2011, Governor Branstad rescinded Executive Order 42, ending the system of automatic restoration of voting rights that had been in place for the prior six years. In its place, Executive Order 70 (APP 83) substituted an extensive voter rights restoration application process, making Iowa one of the two most-restrictive states for voting for citizens with criminal records.⁵

Executive Order 70 imposes hurdles to voter rights restoration that have resulted in significant disenfranchisement in Iowa. An applicant must complete a

⁴ NICOLE D. PORTER, EXPANDING THE VOTE: STATE FELONY DISENFRANCHISEMENT REFORM, 1997–2010 12 (Oct. 2010), *available at* <http://tinyurl.com/prlk28n>.

⁵ THE COUNCIL OF STATE GOV’TS, FELON VOTER DISENFRANCHISEMENT 1, *available at* http://knowledgecenter.csg.org/kc/system/files/CR_Felon%20Voter%20Disenfranchisement_0.pdf (“Florida, Iowa and Kentucky authorize permanent voting restrictions for all felons.”). Kentucky has since restored voting rights to citizens who have completed their sentences and were disenfranchised because of non-violent convictions. See Kentucky Exec. Order 2015-871, signed into law by Governor Steven L. Beshear on November 24, 2015, *available at* <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2015-MISC-2015-0871-242277.pdf>.

multi-step paperwork process, demonstrate that he or she has paid court-imposed fines, fees and restitution or is making a good faith effort to do so, and obtain and provide a copy of the applicant's Iowa Criminal History Record from the Iowa Division of Criminal Investigation, at a cost of \$15.00 per request. (APP 86–92). In addition to the financial costs of applying, the process delays an applicant from registering to vote, given the administrative requirements for the applicant as well as processing time on the part of the Department of Public Safety to conduct a criminal background check and the Governor's Office to review the application. The review process can take up to six months to complete.⁶ In addition, under Iowa Code § 720.2, any Iowan who has discharged a felony conviction and votes without having his or her voting rights restored by the Governor is subject to prosecution for perjury, a Class D felony.⁷

According to the Governor's Office, between Jan. 14, 2011, and Dec. 1, 2014, roughly 14,500 people discharged a felony offense in Iowa and had not been convicted of another felony, making each eligible to apply for restoration of voting

⁶ Ryan J. Foley, *Iowa Felons' Voting Rights: Terry Branstad Executive Order Disenfranchises Thousands*, HUFFINGTON POST (June 24, 2012), http://www.huffingtonpost.com/2012/06/24/iowa-felons-voting-rights-terry-branstad_n_1622742.html.

⁷ See State of Iowa Official Vote Registration Form (rev. April 9, 2014), available at <https://sos.iowa.gov/elections/pdf/voteapp.pdf> (requiring the applicant to aver that "I have not been convicted of a felony (or I have received a restoration of rights)").

rights.⁸ However, of the thousands of eligible individuals, only a handful (less than 1% of Iowans who finished their sentences between 2011 and 2014) even applied. Indeed, during the same time period, Gov. Branstad's office received only 110 applications, and of these applicants, just 64 had their rights restored.⁹ Not surprisingly, the percentage of successful applicants—which hovered at around 80% before 2005¹⁰—has fallen considerably since the imposition of the more onerous 2011 requirements.¹¹

Thus, more than 14,400 Iowans were disenfranchised in less than three years.¹² This number will continue to increase with the release of more than 5,000 people from prison in Iowa each year.¹³

⁸ Editorial, *No Vote for Iowa's Felons*, THE GAZETTE (Dec. 7, 2014), <http://www.thegazette.com/subject/opinion/staff-editorial/no-vote-for-iowas-felons-20141207>.

⁹ *Id.*

¹⁰ Christie Sennott & John F. Galliher, *Lifetime Felony Disenfranchisement in Florida, Texas, and Iowa: Symbolic and Instrumental Law*, 33 SOC. JUST. J. 79, 88 (2006).

¹¹ Restoration application procedures are especially disenfranchising for ex-offenders with limited resources and education. See Editorial, *supra* note 10. In 2012, Governor Branstad's office simplified the application's instructions, removed the credit check, and eliminated the requirement to fully pay off all restitution, fines, and court costs before applying for voting rights restoration. The process, however, remains arduous: Applicants must answer 29 questions about their criminal backgrounds and other matters, pay a fee for a criminal history check, and submit documentation proving they are making a "good faith" effort to pay court debts. See BRENNAN CTR. FOR JUST., VOTING RIGHTS RESTORATION EFFORTS IN IOWA (March 27, 2014), *available at* <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-iowa>.

¹² See Editorial, *supra* note 10; see also Ryan J. Foley, *Iowa Governor Restores More Felons' Voting Rights*, WASH. TIMES (Jan. 14, 2014), *available at* <http://tinyurl.com/ob2qkkn> (reporting that from 2011 to 2013, an estimated 25,000 Iowans completed their sentences, but only 40 regained their voting rights).

¹³ See IOWA BD. OF PAROLE, ANNUAL REPORT FISCAL YEAR 2014 8 (2014), *available at* <http://www.bop.state.ia.us/Document/1001>; IOWA DEP'T OF CORRECTIONS, FY2014 ANNUAL REPORT 18 (2014), *available at* <http://www.doc.state.ia.us/UploadedDocument/512>.

II. IOWA'S INTERESTS ARE BEST SERVED BY BROAD RESTORATION OF VOTING RIGHTS FOR PERSONS IN IOWA COMMUNITIES

A. Restoring The Right To Vote Upon Release From Prison Strengthens Iowa Communities

Individuals rejoin their communities upon release from prison by re-engaging with society as citizens rather than as inmates; regaining control over their daily lives and employment; and re-establishing ties to their family and resuming family roles.¹⁴ Permitting individuals the right to vote upon release from prison substantially promotes each of these reintegration mechanisms.

1. Voting Enhances Political Participation

Voting is “the essence of a democratic society.” *Reynolds*, 377 U.S. at 555. It occupies a vital role in our system of government by “providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live.” *Chiodo*, 846 N.W.2d at 848. Restoration of voting rights upon release from prison facilitates reintegration by promoting free exercise of the rights and responsibilities of citizenship. Voting encourages released persons to become informed and involved and provides them a voice in the affairs of the community from which they were excluded during the terms of their incarceration, thereby

¹⁴ Christie Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 96–97 (2003).

maximizing their chances of rehabilitation.¹⁵

Continued disenfranchisement, on the other hand, undermines the process of reintegration by treating individuals who have served prison sentences as second-class citizens.¹⁶ It is a tangible and symbolic reminder that a person with a past conviction is prohibited from attaining the full benefits and protections of the law, or of shaping that law.¹⁷ Denial of the right to vote undercuts the self-esteem of the released individual by implying he or she is unfit to cast a ballot. Although individuals are expected to return to their communities as productive, law-abiding citizens upon release from prison, denial of the right to vote divides them from friends and neighbors who may play an active role in the democratic process, and isolates them from society. As one court explained:

Disenfranchisement is the harshest civil sanction imposed by a

¹⁵ See BLACK'S LAW DICTIONARY 1287 (10th ed. 2014) (defining rehabilitation as “[t]he process of seeking to improve a criminal’s character and outlook so that he or she can function in society without committing other crimes”).

¹⁶ See, e.g., JAMIE FELLNER & MARC MAUER, THE SENTENCING PROJECT, LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 14–16 (Oct. 1998), available at http://www.sentencingproject.org/doc/file/fvr/fd_losingthevote.pdf (“Disenfranchisement contradicts the promise of rehabilitation. The offender finds himself released from prison, ready to start life anew and yet at election time still subject to the humiliating implications of disenfranchisement [Denying him the vote] is likely to reaffirm feelings of alienation and isolation, both detrimental to the reformation process.”); Miles Rapoport & Jason Tarricone, *Election Reform’s Next Phase: A Broad Democracy Agenda and the Need for a Movement*, 9 GEO. J. ON POVERTY L. & POL’Y 379, 394 (2002) (“The continuing disenfranchisement of ex-felons opposes two core American values: the democratic right to vote and the ability of the individual to leave behind the past and start a new life.”); Alec C. Ewald, “Civil Death”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1114–15 (2002).

¹⁷ Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407, 414 (2012).

democratic society. When brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box . . . [he] must sit idly by while others elect his civic leaders and . . . choose the fiscal and governmental policies which will govern him and his family.

McLaughlin v. City of Canton, 947 F. Supp. 954, 971 (S.D. Miss. 1995).

2. The Right to Vote Strengthens Families and Communities

Voting by its very nature is a communal and social activity.¹⁸ Most people vote for the first time after discussing the issues with family or other community members. Voting takes place in areas where the community gathers, like schools or houses of worship. It is no surprise, then, that disenfranchisement affects both family life and the political life of entire communities, not just those who have had their right to vote taken away. Conversely, restoring voting rights has a similarly broad positive effect.

Strict disenfranchisement laws correlate with lower turnout among eligible voters.¹⁹ Because voting is a habit that must be acquired, the ripple effects of disenfranchisement are felt throughout the community. First-time voters often learn basic information about how and where to vote from family members rather

¹⁸ See MARC MAUER, JOINT CTR. FOR POL. & ECON. STUDIES, *DISENFRANCHISING FELONS HURTS ENTIRE COMMUNITIES* 5, 6 (May/June 2004).

¹⁹ See, e.g., Arman McLeod et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*, 11 VA. J. SOC. POL'Y & L. 66, 78 (2003) ("We found that the mean voter turnout rate in states with the most restrictive criminal disenfranchisement laws is lower than in states with less restrictive criminal disenfranchisement laws.")

than from official sources like election officials or government publications.²⁰ The propensity of younger people to vote is highly correlated with their parents' behavior and resources.²¹ Taking one's children to vote, such as plaintiff Kelli Jo Griffin did here, is seen as a simple and effective way to demonstrate to them the function and importance of American democracy.²² As a result, the disenfranchisement of a parent or other head of a household often discourages voting in an entire family.²³

Indeed, felony disenfranchisement is a policy that punishes not only persons who committed offenses, but also their families and communities. Studies indicate that many persons with convictions come from the same inner-city neighborhoods.²⁴ When disproportionate numbers of citizens in the same community are denied the right to vote, the political power of the entire community, including those who have no involvement with the criminal justice

²⁰ Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 AM. POL. SCI. REV. 41, 42–43 (March 2002).

²¹ *Id.* at 54.

²² Amy Joyce, *Go Vote, and Take Your Kids with You*, THE WASH. POST (Nov. 3, 2014), available at <https://www.washingtonpost.com/news/parenting/wp/2014/11/03/go-vote-and-take-your-kids-with-you/>; Will You Be Taking Your Kids to the Polls on Election Day?, families.com, <http://www.families.com/blog/will-you-be-taking-your-kids-to-the-polls-on-election-day> (last visited Dec. 4, 2015).

²³ ERIKA WOOD, BRENNAN CTR. FOR JUST., RESTORING THE RIGHT TO VOTE 12 (2009), available at http://brennan.3cdn.net/5c8532e8134b233182_z5m6ibv1n.pdf; see also Plutzer, *supra* note 22, at 43 (“Parental political involvement can provide both behavior to model and campaign-relevant information that children rarely get from formal schooling.”).

²⁴ See ESTELLE H. ROGERS, PROJECT VOTE, RESTORING VOTING RIGHTS FOR FORMER FELONS (March 2014), available at <http://www.projectvote.org/wp-content/uploads/2014/03/POLICY-PAPER-FELON-RESTORATION-MARCH-2014.pdf>.

system, is weakened.²⁵ These communities are less able to gain political representation and influence and, consequently, access to public resources.²⁶

As of June 30, 2015, less than 9% of the Iowan prison population was serving a life sentence.²⁷ The majority of inmates are serving sentences of less than 20 years, and are overwhelmingly under 50 years of age.²⁸ These individuals will rejoin their communities—many will rejoin the same communities—as spouses, parents, workers, neighbors and taxpayers in the prime of their adult lives, at an age when assuming civic responsibilities and serving as an example for their children and communities is most significant. For these people, returning to and maintaining stable family relationships is essential; it results in a much greater chance of successful and prolonged rehabilitation.²⁹ The stigma of disenfranchisement serves only as an obstacle to achieving such stability.

3. Restoration of Voting Rights Improves Public Safety

Empirical evidence suggests that disenfranchisement is positively correlated with recidivism and impedes the effectiveness of community-based policing. When individuals remain isolated and stigmatized despite re-entry into society,

²⁵ *Id.*

²⁶ *Id.*; Paul S. Martin, *Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money*, 47 AM. J. OF POL. SCI. 122 (Jan. 2003) (noting that “counties that vote at higher rates are rewarded with higher per capita federal expenditures”).

²⁷ State of Iowa Dep’t of Corrections, *Quarterly Quick Facts, June 30, 2015*, available at <http://www.doc.state.ia.us/UploadedDocument/536>.

²⁸ *Id.*

²⁹ See, e.g., John Laub et al., *Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process*, 63 AM. SOC. REV. 225, 237 (1998).

they are less likely to see rehabilitation as a fully realizable goal. The message that it sends to people with past convictions is that total rehabilitation is impossible.³⁰ “[I]f society rejects them no matter what they do, the incentive to transition into a law-abiding citizen role is correspondingly reduced.”³¹ As Justice Brennan aptly described in his concurring opinion in *Trop v. Dulles*, punishment that isolates the offender from society is destructive to his ability to rehabilitate:

It is perfectly obvious that it constitutes the very antithesis of rehabilitation, for instead of guiding the offender back into the useful paths of society, it excommunicates him and makes him, literally, an outcast. I can think of no more certain way in which to make a man in whom rests the seeds of antisocial behavior more likely to pursue further a career of unlawful activity than to place on him the stigma of a derelict

356 U.S. 86, 111 (1957) (considering validity of stripping citizenship as a punishment for military desertion).

Conversely, integrating released persons into the community, including through restoration of voting rights, decreases recidivism and improves relationships between law enforcement and community members. There is a proven correlation between voting and lower rates of arrest, incarceration, and self-

³⁰ Hamilton-Smith & Vogel, *supra* note 19, at 413.

³¹ CHRISTOPHER UGGEN ET AL., *Less Than the Average Citizen: Stigma, Role Transition, and the Civic Reintegration of Convicted Felons*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 258, 281 (Shadd Maruna & Russ Immarigeon eds., 2004).

reported criminal activity.³² Voters are not only more likely not to get arrested, voters with arrest histories are also less likely to be re-arrested.³³

In 2002, the United States Department of Justice collected data on the vast majority of people released from prison in 1994, including their arrest and prosecution records in the immediate years after release.³⁴ This data shows that persons released in states that permanently disenfranchise at least some individuals with felony convictions are “roughly ten percent more likely to reoffend than those released in states that restore the franchise post-release.”³⁵ Similarly, an analysis by the Florida Parole Commission (a lifetime disenfranchisement state, like Iowa) found a statewide recidivism rate of 33.1%, but as of May 31, 2011, only 11.1% of those with a felony conviction who had their voting rights restored in 2009–10 after applying for clemency had reoffended.³⁶

Disenfranchisement also impacts public safety by creating an additional basis for perceived “otherness” between community members and law enforcement. As Hubert Williams, former President of the Police Foundation, explained:

³² See JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 25 201–210 (2006).

³³ *Id.* at 205.

³⁴ See PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP’T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994 (2002), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

³⁵ Hamilton-Smith & Vogel, *supra* note 19, at 427.

³⁶ FLORIDA PAROLE COMM’N, STATUS UPDATE: RESTORATION OF CIVIL RIGHTS CASES GRANTED 2009 AND 2010 7, 12 (July 1, 2011), available at <https://www.fcor.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf>.

Effective policing relies on collaborative partnerships with people that live in the community. But when an entire group of people are effectively excluded from the community—creating a pariah class, if you will—you can't have meaningful partnerships, and the police's ability to prevent and deter crime suffers as a result. To have effective policing we need to bring people back as whole citizens, with both the rights and responsibilities that come with being members of that community.³⁷

Iowa has adopted and is working to implement community policing models in its urban areas as a way of building bridges between law enforcement and the communities they serve.³⁸ Community policing models implement strategies for working closely with community residents to solve problems and improve overall quality of life.³⁹ The effectiveness of these strategies is undermined by a policy favoring disenfranchisement, especially in communities with a high concentration of residents who cannot vote.⁴⁰

³⁷ Hubert Williams, Executive Dir., Police Found., Remarks at Voting Rights and Reintegration: A Role for Law Enforcement Convening, New York University School of Law (June 8, 2007).

³⁸ This law enforcement approach, called community policing, has been adopted in many Iowan communities. *See, e.g.*, The City of Dubuque, <http://www.cityofdubuque.org/594/Community-Oriented-Policing>; City of West Branch, Iowa, <http://westbranchiowa.org/departments/police>; City of Knoxville, Iowa, <http://www.knoxvilleia.gov/?nid=138>; City of Urbandale, Iowa, <http://www.urbandale.org/303/Police-Department>; City of Tipton, <http://www.tiptoniowa.org/city-of-tipton/city-departments/tipton-police-department.aspx>; Davenport Iowa, <http://www.cityofdavenportiowa.com/departments/division.php?structureid=234>; Evansdale PD, <http://evansdalepolice.org/> (last visited Dec. 7, 2015).

³⁹ *See* The City of Dubuque, <http://www.cityofdubuque.org/594/Community-Oriented-Policing> (last visited Dec. 7, 2015).

⁴⁰ *See, e.g.*, WILLIAM STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE 310–12 (2012); WOOD, *supra* note 25, at 10.

4. Iowa's Disenfranchisement Policy Disproportionately Affects Iowa Minorities

Restoration of voting rights also serves to offset racial disparities that pervade the criminal justice system. Disenfranchised persons with felony convictions are disproportionately persons of color; given that “arrest, conviction, and imprisonment fall more heavily” on persons of color, felony disenfranchisement does so as well.⁴¹ Certain minority populations are subject to arrest, conviction, and parole at substantially higher rates. Iowa has led the nation in disproportionate representation of minorities among Iowans who are disenfranchised due to prior felony convictions.

Over the last thirty years, the number of federal prisoners has grown by 800%.⁴² State prison populations have increased by more than 200%.⁴³ Nationally, African Americans make up 13% of the general U.S. population, yet they constitute 28% of all arrests nationwide.⁴⁴ In 2014—and for at least the last half century—African American males had higher imprisonment rates than prisoners of

⁴¹ Jeffrey Reiman, *Liberal and Republican Arguments Against the Disenfranchisement of Felons*, CRIM. JUST. ETHICS, at 4 (Winter/Spring 2005).

⁴² *The State of Civil and Human Right in the United States: Hearing Before the S. Subcomm. On the Constitution, Civil Rights, and Human Rights*, 113th Cong. (Dec. 9, 2014) (Statement of Marc Mauer, Executive Director of the Sentencing Project), available at http://www.sentencingproject.org/doc/publications/rd_Statement_for_SJC_Hearing_on_Civil_and_Human_Rights_in_the_U.S._Dec_2014.pdf (hereinafter, “Mauer Statement”).

⁴³ See PETER WAGNER, PRISON POLICY INITIATIVE, TRACKING STATE PRISON GROWTH IN 50 STATES (2014), available at <http://www.prisonpolicy.org/reports/overtime.html>.

⁴⁴ CHRISTOPHER HARTNEY & LINH VUONG, NAT’L COUNCIL ON CRIME & DELINQUENCY, CREATED EQUAL: RACIAL AND ETHNIC DISPARITIES IN THE US CRIMINAL JUSTICE SYSTEM 2 (Mar. 2009), available at http://www.nccglobal.org/sites/default/files/publication_pdf/created-equal.pdf.

other races within every age group.⁴⁵ Overall, African Americans are 5.6 times as likely and Latinos 1.8 times as likely to be incarcerated as whites.⁴⁶

As a result of the dramatic increases in federal and state prison populations, disenfranchisement rates have also increased dramatically, rising from 1.17 million in 1976 to 5.85 million by 2010.⁴⁷ Due to the racial disparity reflected in the prison population, “[o]ne of the most prominent and consistent findings in [the] literature is that [felony disenfranchisement] laws produce a disproportionate effect on black communities.”⁴⁸ Research suggests that of the estimated 5.85 million Americans who are currently disenfranchised, 2.2 million (7.7%) are African American, compared to 1.8% of the non-African American population.⁴⁹

The latest U.S. Census information shows that Iowa’s population hovers at

⁴⁵ E. ANN CARSON, U.S. DEP’T OF JUST., PRISONERS IN 2014 15 (Sept. 2015), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>; *see also* Mauer Statement, *supra* note 44, at 2; Christopher Ingraham, *Charting the Shocking Rise of Racial Disparity in our Criminal Justice System*, THE WASH. POST (July 15, 2014), *available at* <https://www.washingtonpost.com/news/wonk/wp/2014/07/15/charting-the-shocking-rise-of-racial-disparity-in-our-criminal-justice-system/>; Derek Neal & Armin Rick, *The Prison Boom & Lack of Black Progress After Smith & Welch* (Nov. 2013), *available at* http://home.uchicago.edu/~arick/prs_boom_201309.pdf.

⁴⁶ MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 4 (July 2007), *available at* http://www.sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf; *see also* Mauer Statement, *supra* note 44, at 2 (noting that these numbers are even higher for male minority prison populations).

⁴⁷ *Id.* at 9.

⁴⁸ Melanie Bowers & Robert R. Preuhs, *Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Nonfelons*, 90 SOC. SCI. Q. 3, 723 (Sept. 2009).

⁴⁹ THE SENTENCING PROJECT, FACT SHEET: FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES (April 2014), *available at* http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Laws%20in%20the%20US.pdf.

around 90% white.⁵⁰ Blacks or African Americans make up just over 3% of the state's population, while Hispanics or Latinos comprise approximately 5.6% and Native American 0.5%.⁵¹ As of June 30, 2015, however, blacks represented over 25% of the Iowan prison population.⁵² Hispanics represented 6.7%, and Native Americans 1.7%.⁵³ Minorities, therefore, make up a third of Iowa's prison population, while they comprise less than 8% of the state's overall population. Iowa incarcerates blacks at a rate more than 10 times that of whites, one of the highest ratios in the country.⁵⁴

The disproportionate percentage of minorities in Iowa prisons directly corresponds with the state's disproportionate disenfranchisement of minority citizens. In 2002, prior to Executive Order 42, the National Commission on Federal Election Reform reported that 23% of black Iowans were denied the right to vote due to the state's lifetime disenfranchisement policy.⁵⁵ This percentage, which translated into nearly 9,200 disenfranchised black voters, was "nearly the

⁵⁰ U.S. Census Bureau, State & County Quick Facts, Iowa, *available at* <http://quickfacts.census.gov/qfd/states/19000.html> (last visited Dec. 4, 2015).

⁵¹ *Id.*

⁵² *See* Quarterly Quick Facts, *supra* note 29.

⁵³ *Id.*

⁵⁴ MAUER & KING, *supra* note 48, at 4. Recent U.S. Census, FBI and U.S. Bureau of Justice statistics indicate that forty-one Iowa law enforcement jurisdictions (jurisdictions reporting at least 200 arrests in 2011 and 2012, with a black population of at least 500) arrested blacks at a higher rate than people of other races. *See* Des Moines Register Data Central, Arrest Rates for Blacks in Iowa, <http://db.desmoinesregister.com/arrests-for-blacks-in-iowa> (last visited Dec. 7, 2015) (hereinafter, "Arrest Rates for Blacks in Iowa"). One Iowa jurisdiction reported arrest rates 9.9% higher for black than non-black races, in a county where only 2% of the population was black. *Id.*

⁵⁵ Sennott & Galliher, *supra* note 12, at 88.

highest in the nation.”⁵⁶ Research suggests that Iowa’s pre-2005 disenfranchisement rate for African Americans, which was “more than triple the national [] rate,” was “*entirely* due to the exclusion of ex-felons in Iowa.”⁵⁷ Of those African American adults who were prohibited from voting, more than two-thirds (69%) had completed their sentences.⁵⁸

The effect of felony disenfranchisement laws on the electoral power of minority communities has been devastating.⁵⁹ Although Iowa has a small minority population, its disproportionately high minority incarceration rates render the impact of its disenfranchisement law on minority Iowa communities especially severe. In 2013, close to 70% of Iowa’s African American population was concentrated in the same five counties, with more than 55% living in four cities: Des Moines, Davenport, Waterloo, and Cedar Rapids.⁶⁰ The Iowa jurisdictions containing these cities reported disparities ranging between 5.5% and 7.2% between black and non-black arrest rates.⁶¹ These statistics indicate that a small segment of African American communities disproportionately bears the brunt of

⁵⁶ *Id.*

⁵⁷ THE SENTENCING PROJECT, IOWA AND FELONY DISENFRANCHISEMENT 4 (Feb. 2005), *available at* http://www.sentencingproject.org/doc/publications/fd_iowa.pdf.

⁵⁸ *Id.* at 2.

⁵⁹ Robert R. Preuhs, *State Felon Disenfranchisement Policy*, 82 SOC. SCI. Q. 4, 738 (Dec. 2001).

⁶⁰ THE STATE DATA CTR. OF IOWA AND THE IOWA COMM’N ON THE STATUS OF AFRICAN-AMERICANS, AFRICAN-AMERICANS IN IOWA: 2015 2 (February 2015), *available at* <http://www.iowadatacenter.org/Publications/aaprofile2015.pdf>.

⁶¹ *See Arrest Rates for Blacks in Iowa, supra* note 56.

the racial disparity in Iowa incarceration rates through decreased electoral power, when released persons rejoin those communities without the right to vote.⁶²

B. Iowa's Disenfranchisement Policy Is Unrelated to Its Penological Interests

A critical inquiry when applying strict scrutiny is whether the “governmental objectives can fairly said to be advanced” by the law in question. *See Varnum*, 763 N.W.2d at 897, *citing Fed. Land Bank v. Arnold*, 426 N.W.2d 153, 156 (Iowa 1988) (“First we must examine the legitimacy of the end to be achieved; we then scrutinize the means to achieve that end”). Iowa’s disenfranchisement policy is unrelated to either its broader criminal justice goals of rehabilitating its citizens and protecting communities, or its specific stated interest in preserving ballot integrity.

It is “impossible to pass judgment on the reasonableness of a [] classification without taking into consideration, or identifying, the purpose of the law.” *Varnum*, 763 N.W.2d at 883. The purposes underlying criminal sanctions and punishment largely fall within two theoretical justifications. Punishment may fulfill a deontological goal, focused on the rightness or wrongness of the actions themselves, or a utilitarian goal, which looks to the outcomes, or consequences, of

⁶² *See id.*

the action upon society.⁶³ Disenfranchisement laws are generally considered non-punitive, regulatory measures intended to serve a utilitarian agenda. *See Trop*, 356 U.S. at 96–97.

Aspects of a utilitarian criminal justice agenda include incapacitation, i.e. protecting society from harm, and rehabilitation.⁶⁴ Rehabilitation and incapacitation are central to Iowa’s criminal justice policy. Iowa Code § 901.5, which provides the state’s authority to levy sanctions for criminal activity, specifically provides that the court should determine “which [fine or punishment] or which combination of them . . . will provide maximum opportunity for *the rehabilitation of the defendant*, and for *the protection of the community* from further offenses by the defendant and others.” (emphasis added).

Here, neither component of Iowa’s utilitarian criminal justice agenda, rehabilitation or incapacitation, is served by the continued disenfranchisement of citizens upon their release from prison. No social harm has been attributed to the exercise of voting rights by the released population. There is no evidence that preventing released persons from voting directly contributes to a reduction in crime

⁶³ BARBARA A. HUDSON, UNDERSTANDING JUSTICE: AN INTRODUCTION TO IDEAS, PERSPECTIVES AND CONTROVERSIES IN MODERN PENAL THEORY 3–5 (Open University Press, 2d ed. 2003).

⁶⁴ Kent Greenwalt, *Punishment*, 74 J. CRIM. L. & CRIMINOLOGY 343, 350–352 (1983).

or aids in rehabilitating former offenders.⁶⁵ In fact, as noted, the evidence shows the opposite—that disenfranchisement is associated with *increased* crime rates.⁶⁶

Nor does Iowa’s disenfranchisement policy serve its specific utilitarian interests of protecting the ballot and conducting orderly elections. *See* Ruling, at 16 (APP 209). Notably, there is no statistical evidence that former prisoners, either as a group or as individuals, are more likely to commit election related crimes; nor would disenfranchisement necessarily prevent the commission of such crimes.⁶⁷ Indeed, restoring the right to vote to individuals upon their release from prison is much more closely aligned with Iowa’s stated goals concerning the integrity and regulation of elections, as it furthers civic responsibility. As this Court has noted, the fact that Iowa’s stated interests are “at best, minimally advanced” by its disenfranchisement policy suggests that “stereotype and prejudice, or some other unarticulated reason, could be present to explain” its real objectives. *See Varnum*, 763 N.W.2d at 901.

Once the criminal justice system has determined that an individual is ready to return to the community, the goals of the state in reintegration and rehabilitation are best served by treating him as a full-fledged citizen and restoring the rights and responsibilities that come with that status. This Court has explained that the power

⁶⁵ CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE ON THE SECOND AND THIRD U.S. REPORTS TO THE COMMITTEE ¶ 35 (2006).

⁶⁶ MANZA & UGGEN, *supra* note 34, at 205–207.

⁶⁷ *Id.*

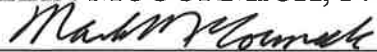
of the state to enact laws to promote the public welfare and provide for the safety and comfort of its inhabitants “should be exercised *in the interest* of the public welfare.” *City of Osceola v. Blair*, 231 Iowa 770, 771 (1942) (emphasis added). Here, Iowa’s disenfranchisement policy runs counter to the public welfare’s interest in rehabilitating individuals and reducing recidivism.

CONCLUSION

The right to vote is fundamental. Iowa’s broad restrictions on voting rights are unrelated to Iowa’s stated interest in the integrity or order of elections, and are detrimental to the citizens and communities of Iowa. The Court should find that Iowa’s disenfranchisement policy places an unconstitutional burden on the rights of Iowa citizens, or strictly construe Iowa’s disenfranchisement policy to deny voting rights to the fewest number of Iowa citizens consistent with valid state goals.

Respectfully submitted,

BELIN MCCORMICK, P.C.


By: Mark McCormick, Esq.

666 Walnut Street, Suite 2000
Des Moines, IA 50309-3999
Telephone: 515-283-4615
Facsimile: 515-558-0615

mmccormick@belinmccormick.com

GREENBERG TRAURIG, LLP

Carmen Beauchamp Ciparick, Esq.
200 Park Avenue
New York, NY 10166
Telephone: 212-801-9200
Facsimile: 212-801-6400
ciparickc@gtlaw.com

BRENNAN CENTER FOR JUSTICE AT
NYU SCHOOL OF LAW

Myrna Pérez
161 Avenue of the Americas
New York, NY 10013
Telephone: 646-292-8310
PerezM@mercury.law.nyu.edu

*Attorneys for Amicus Curiae Iowa League of
Women Voters*

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 me.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

this brief contains 6,590 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because:

this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point, or

this brief has been prepared in a monospaced typeface using MS Word 2007 with _____ characters per inch and _____ style.



Mark McCormick, Esq., AT0005111

BELIN MCCORMICK, P.C.

666 Walnut Street, Suite 2000

Des Moines, IA 50309-3999

Telephone: 515-283-4615

Facsimile: 515-558-0615

mmccormick@belinmccormick.com