THE IOWA STATE CONSTITUTION (Oxford University Press 2018)

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The book's account of judicial rulings and other relevant developments is current through June 30, 2017. The following additions bring the book up to date through December 14, 2018.

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ARTICLE I

Section 1

On page 68, at the end of the carryover paragraph, insert a footnote stating:

> In *Honomichl v. Valley View Swine, LLC* (2018), the court reaffirmed *Gacke*'s analytic framework and emphasized its fact-intensive nature.

On page 68, after the first full paragraph, insert a new paragraph stating:

> If a person files a tort claim for damages against a government official, alleging that the official violated the plaintiff's Section 1 rights, the official will be shielded from liability "if she or he pleads and proves as an affirmative defense

that she or he exercised all due care to conform to the requirements of the law" (*Baldwin v. City of Estherville*, 2018).

Section 3

On page 71, at the end of the final paragraph's first sentence, insert a footnote stating:

> Litigants commonly do not argue that Iowa's religion clauses provide more protection than the U.S. Constitution's First Amendment. *See, e.g.*, *Bandstra v. Covenant Reformed Church* (2018).

Section 6

On page 76, at the end of the first full paragraph's first sentence, insert a footnote stating:

> Justice Edward Mansfield and a coauthor have argued that the Iowans who wrote and adopted Section 6 likely did not intend the provision to function as an equal-rights guarantee. They contend that the clauses sitting on opposite sides of Section 6's semicolon were intended to perform different functions: the "uniformity" clause was "aimed at geographical discrimination" and the "privileges or immunities" clause was intended "to prevent unwarranted government grants of special economic status or protection." Edward M. Mansfield & Conner L. Wasson, "Exploring the Original Meaning of Article I, Section 6 of the Iowa Constitution," 66 *Drake L. Rev.* 147 (2018).

On pages 76-77, after the first citation and parenthetical in footnote 35, insert:

> The court has explained that, "once the state articulates a legitimate governmental interest that appears plausible on the face of the statute, the burden of coming forward with evidence to attack the asserted justification shifts to the challenger" (*Behm v. City of Cedar Rapids*, 2018).

On page 77, at the end of the carryover paragraph, insert:

> . . . and differing inheritance-tax treatment of stepchildren whose parent and stepparent divorced prior to the latter's death and stepchildren whose parent and stepparent remained married (*Tyler v. Iowa Department of Revenue*, 2017).

On page 77, after the penultimate sentence of the full paragraph, insert a footnote stating:

> Arguing that *Racing Association*'s application of an aggressive form of rational-basis review "is antidemocratic and contrary to basic principles of self-government," Justice Waterman has urged the court to abandon it. *See Behm v. City of Cedar Rapids* (2018) (Waterman, J., concurring in part and dissenting in part).

On page 78, after the sentence that immediately follows footnote 38, insert:

> For a rare instance in which the Iowa Supreme Court handed down an equal-protection ruling concerning fundamental rights, see *Planned Parenthood of the*

Heartland v. Reynolds (2018). As discussed in the commentary on Article I, Section 9, the court in that case relied primarily on principles of substantive due process when striking down a law imposing a 72-hour waiting period for abortions, finding that it impermissibly interfered with women's fundamental right to bodily autonomy. Acknowledging that it thus need not reach the equal-protection issue, the court explained that the law in question was also subject to strict scrutiny—and unconstitutional—under Section 6. The court wrote that, without the autonomy necessary to control "their reproductive futures," women can "never fully assume a position in society equal to men."

Section 8

On page 84, at the end of the carryover paragraph, insert a footnote stating:

> Similarly, the Iowa Supreme Court holds that an officer's reasonable mistake of law cannot justify a traffic stop, and that evidence discovered as a result of such an unjustified stop must be suppressed (*State v. Scheffert*, 2018; *State v. Coleman*, 2017; *State v. Tyler*, 2013). The U.S. Supreme Court takes a different approach, holding that a reasonable mistake of law *can* justify a traffic stop (*Heien v. North Carolina*, 2014).

On page 86, immediately before Section 8's final paragraph, insert the following new paragraphs:

> In its first ruling of 2018, the same 4-3 split recurred in *State v. Brown*. Police had obtained a search warrant to look for drugs and firearms at the home of Jeffrey Sickles. When the officers arrived, they found Danielle Brown visiting the home, smoking methamphetamine with Sickles's sister. After the home's occupants had all been handcuffed, officers searched a purse that had been on the floor near Brown. The officers discovered that the purse was Brown's and that it contained marijuana. At her ensuing criminal prosecution, the district court refused to suppress the evidence discovered in the purse. Led by Justice Appel, the Iowa Supreme Court reversed, finding that "if a third party is not named in a warrant, that party continues to have expectations of privacy when a search warrant is executed on a residence in which they are present." "A holding of this court that a visitor loses all reasonable expectations of privacy when visiting a premises by hanging a coat on a rack or placing a purse on a chair or on the floor," Justice Appel wrote, "simply does not comport with reality." Writing for the dissent, Justice Waterman reasoned that "[p]olice executing a premises search warrant in a drug raid do not have an affirmative duty to determine what possessions belong to whom." For these justices, three factors were especially noteworthy: when police entered the home, the purse was sitting on the floor and could have contained the items described in the search warrant; the purse was not in Brown's physical possession; and Brown was smoking methamphetamine, an illegal activity closely related to the suspicions underlying the search warrant.

We saw the 4-3 split once again in *State v. Ingram* (2018). In that case, Justice Appel led a majority rejecting the federal approach to warrantless inventory searches of vehicles that law-enforcement officers have chosen to impound. Under the U.S. Constitution, warrantless inventory searches of such vehicles are permissible so long as they amount to a reasonable application of local law-enforcement policies (*Florida v. Wells*, 1990). The *Ingram* majority found the federal approach unsatisfactory because (among other things) it shifts control of individuals' privacy protections from judges to law-enforcement officials. The majority encouraged police to "explore alternative arrangements short of impoundment" when arresting drivers and said that, when impoundment is indeed necessary, the owner or operator should be allowed to retrieve personal items from the vehicle. Most importantly, the court held that police cannot conduct a warrantless inventory search of closed containers found within an impounded vehicle unless they have obtained the owner's or operator's consent. Led by Justice Mansfield, the justices in the minority found it unnecessary to reach questions of state constitutional law. In their view, the search in question violated the Fourth Amendment.

A 4-3 split along those precise lines is not, of course, inevitable. Justice Mansfield wrote for a majority of the court in *State v. Coffman* (2018), for example, declining an invitation to find a wide gap between the Fourth Amendment and Section 8 on the scope of the community-caretaking exception to the warrant requirement, but nevertheless finding a noteworthy difference between them:

> In applying the Fourth Amendment, we have said that "the relevant test for determining whether the community caretaking exception applies is an objective one based on the information available at the time of the stop and does not depend upon the subjective motivations of the individual officers involved." Under article I, section 8, though, we believe it is incumbent on the state to prove *both* that the objective facts satisfy the standards for community caretaking *and* that the officer subjectively intended to engage in community caretaking (quoting *State v. Kurth*, 2012).

Applying that test, Justice Mansfield's majority concluded that an officer had not violated Section 8 when—proceeding without a warrant at 1:08 in the morning—he activated his flashing lights and pulled up behind a vehicle parked on the side of a highway to see if the driver needed help, only to find that the driver manifested signs of being intoxicated. In dissent, Justices Appel and Wiggins expressed reservations about embracing a "public servant" species of the community-caretaking exception. Setting those reservations aside for the present moment, they argued that the officer's actions in this case were permissible under Section 8 only if—contrary to fact—there had been "specific, peculiar, and

articulable facts to support the notion that the occupants of the vehicle consented to receiving assistance." (For a subsequent, unanimous ruling concerning *Coffman* and the community-caretaking exception, see *State v. Smith* (2018).)

With respect to government officials' tort liability for damages caused by their violations of Section 8, the justices in 2018's *Baldwin v. City of Estherville* (2018) disagreed about whether a qualified-immunity defense should be available. None of the justices favored adopting the federal rule that officials cannot be held liable when their conduct "does not violate clearly established . . . constitutional rights of which a reasonable person would have known (*Harlow v. Fitzgerald*, 1982). They disagreed, however, about what to put in that rule's place. Led by Justice Waterman, the majority concluded that a government official will be shielded from liability for damages resulting from Section 8 violations "if she or he pleads and proves as an affirmative defense that she or he exercised all due care to conform to the requirements of the law." Joined by Justice Hecht in dissent, Justice Appel argued in favor of a rule of strict liability.

Section 9

On page 89, after the parenthetical that spans pages 88-89, insert:

Citing the U.S. Supreme Court's rulings in *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1980) and *Board of Pardons v. Allen* (1987), for example, the Iowa Supreme Court concluded in *Belk v. State* (2017) that legislation establishing a parole system can create a protected liberty interest if the legislation "mandates that a parole board must release an inmate if the inmate meets certain statutorily created criteria."

On page 89, immediately after the appearance of footnote 62 in the first full paragraph, insert:

In *State v. Harrison* (2018), for example, the Iowa Supreme Court held that the developmental differences between juveniles and adults do not render it fundamentally unfair to convict juvenile offenders of felony murder.

On page 89, in the parenthetical that cites *F.K. v. Iowa District Court* toward the end of the first full paragraph, add the following additional citation:

In the Interest of M.D. v. K.A., 2018.

On page 89, at the end of the last full paragraph, insert:

Like many federal courts, the Iowa Supreme Court has concluded that a governmental body's failure to follow the procedures prescribed by an ordinance, regulation, or statute does not "give rise, in and of itself, to a due process violation" (*Weizberg v. City of Des Moines*, 2018).

On page 90, at the end of the carryover paragraph, insert a footnote stating:

For another example of a substantive due process claimant securing a rare victory, see *Westco Agronomy Co. v. Wollesen* (2017). In the Ongoing Criminal Conduct Act (Iowa Code § 706A), the legislature has provided powerful civil remedies for those who are harmed when a person negligently allows his or her property or services to be used to facilitate certain kinds of unlawful activity. The Act stated that, when sued under this legislation, the defendant bore the burden of proving that he or she had not been negligent. In *Westco Agronomy*, the Iowa Supreme Court held that this burden-shifting provision of the Act violated Section 9.

On page 90, after the carryover paragraph, insert the following new paragraph:

In what may prove to be a landmark ruling handed down in 2018, the 4-3 court relied upon both procedural due process and substantive due process (as well as Article I, Section 17) to provide those convicted of crimes with a new opportunity to seek postconviction relief. In *Schmidt v. State* (2018), Jacob Schmidt had previously pled guilty to sexually assaulting his fourteen-year-old half-brother, B.C. Years later, B.C. backtracked on his accusations. Schmidt filed a petition for postconviction relief, relying upon B.C.'s apparent recantation and arguing that he was entitled to relief because he was actually innocent of the crime to which he had pled guilty. Writing for the majority, Justice Wiggins concluded that the Iowa Constitution authorizes those seeking postconviction relief to rely upon freestanding claims of actual innocence.[1] The court found that—even for those postconviction applicants who pled guilty—"[h]olding a person who has committed no crime in prison strikes the very essence of the constitutional guarantee of substantive due process," and, under principles of procedural due process, "actually innocent people should have an opportunity to prove their actual innocence." To prevail on a freestanding actual-innocence claim, the applicant for postconviction relief "must show by clear and convincing evidence that, despite the evidence of guilt supporting the conviction, no reasonable fact finder could convict the applicant of the crimes for which the sentencing court found the applicant guilty in light of all the evidence, including the newly discovered evidence." The majority remanded the case so that the district court could apply this newly announced standard.

On page 90, in the first full paragraph, delete the second sentence ("The Iowa Supreme Court has not yet determined whether there is a similar right [to abortion] under the Iowa Constitution") and replace it with:

In *Planned Parenthood of the Heartland v. Reynolds* (2018), the Iowa Supreme Court held that Section 9 provides even greater protection of abortion rights than does the U.S. Constitution. Finding that "[a]utonomy and dominion over one's body go to the very heart of what it means to be free," the court rejected the

[1] As the *Schmidt* court explained, freestanding claims of actual innocence are different from "gateway" claims of actual innocence, where the showing of innocence is simply a procedural prerequisite to securing an adjudication of other constitutional claims.

federal "undue burden" standard for evaluating laws that restrict access to abortion. The court held that laws imposing abortion restrictions are constitutional only if they satisfy strict scrutiny. Applying that demanding standard, the 5-2 court struck down a law requiring that (with limited exceptions) an abortion-seeking woman receive an ultrasound and various kinds of information about her pregnancy and then wait at least 72 hours before receiving the abortion. The court explained that, although the state does have a compelling interest in preserving prenatal life, the available empirical evidence indicates that waiting periods do not "result in a measurable number of women choosing to continue a pregnancy they would have terminated" in the absence of those waiting periods. Joined by Justice Waterman in dissent, Justice Mansfield argued in favor of applying the federal undue-burden standard. Deploying that analytic framework, he found that "[t]he issue is a close one" but concluded that the 72-hour waiting period should be upheld.

Section 10

On page 96, at the end of the carryover paragraph, insert the following new paragraph:

With respect to petitions for postconviction relief, the court has found that, as a general matter, there is no Section 10 right to counsel (*Wise v. State*, 2006). In 2018's *Allison v. State*, however, the court said that serious constitutional concerns would arise if the state's postconviction legislation were not interpreted to allow a prisoner to seek postconviction relief after the three-year statute of limitations expired, if what the prisoner is claiming is that (1) his or her trial counsel was constitutionally ineffective and (2) his or her first postconviction counsel timely filed a claim asserting ineffective assistance of trial counsel but was ineffective in presenting it.

On page 96, at the end of Section 10's final paragraph, insert the following sentence and following new paragraph:

Prejudice need not be shown, however, if the ineffective assistance amounts to a "structural error"—that is, an error "'affecting the framework within which the trial proceeds'" (*Lado v. State*, 2011 (quoting the U.S. Supreme Court's ruling in *Arizona v. Fulminante*, 1991)).

In addition to the right to the effective assistance of counsel, both the Sixth Amendment and Section 10 also give a criminal defendant significant autonomy to be master of his or her own defense at trial. In *McCoy v. Louisiana* (2018), for example, the U.S. Supreme Court held that a criminal defendant's Sixth Amendment rights had been violated when defense counsel—against the wishes of his client—conceded the defendant's guilt of the crime charged. The Court explained that a criminal defendant is entitled to decide for himself what the objectives of his legal proceeding will be, and that—even if his attorney wisely counsels otherwise—a defendant is entitled to decide that the objective of his trial

will be to prove that he did nothing illegal. The *McCoy* Court further held that depriving a defendant of this objective-setting autonomy amounts to a "structural error" of the sort for which prejudice need not be shown in order to obtain relief. In *Krogmann v. State* (2018), the Iowa Supreme Court held that Section 10 provides comparable protections. The state in that case had secured a freeze on Robert Krogmann's substantial financial assets prior to his trial for attempted murder, thereby frustrating his ability to hire a jury consultant and make certain other trial-related expenditures of his own possible choosing. The court held that this violated Krogmann's Section 10 right to be master of his own defense and that, to secure a new trial free of this structural error, he did not have to prove that the outcome of his prior trial would have been different if the state had not unconstitutionally constrained his decision-making autonomy.

Section 17

On page 108, at the end of the carryover paragraph, insert:

> . . . and *State v. Harrison* (2018). For an application concerning an adult offender (one in which the state again prevailed), see *State v. Wickes* (2018).

On page 108, after the first full paragraph, insert the following new paragraph:

> In March 2018's *Schmidt v. State*, the 4-3 court relied upon Section 17 (as well as principles of due process) when ruling that applicants for postconviction relief may bring freestanding claims of actual innocence. The majority reasoned that it would be cruel and unusual to punish a person who had not committed any crime, regardless of whether that person pled guilty or was convicted following a trial. For a lengthier discussion of this important case, see the commentary on Article I, Section 9.

On page 109, at the end of footnote 102, insert:

> In *State v. Zarate* (2018), the court noted that its ruling in *Sweet* rendered Iowa Code Section 902.1(2)(*a*)(1) unconstitutional, because that legislation purported to authorize a court to sentence a juvenile convicted of first-degree murder to life imprisonment "with no possibility of parole unless the governor commutes the sentence to a term of years."

On page 110, at the end of footnote 104, insert:

> A 4-3 split appeared yet again in *State v. White* (2017), with Chief Justice Cady emphasizing for the majority that, under *Lyle* and *Roby*, expert testimony regarding brain science now plays an important role when determining juvenile offenders' mandatory minimum sentences. Writing for the dissent, Justice Mansfield argued that trying "to scientifically calibrate the sentence of any *particular* juvenile offender" is "a fool's errand," and he worried that "requiring a

'scientific' basis for any mandatory minimum sentence . . . is simply a backdoor way of eliminating mandatory minimums" for juvenile offenders.

On page 110, after the first full paragraph, insert the following new paragraphs to conclude the discussion of Section 17:

Through two differently composed 4-3 majorities led by Chief Justice Cady in *In the Interest of T.H.* (2018), the Iowa Supreme Court addressed the application of Iowa's mandatory sex-offender registry scheme to juvenile sex offenders. Joined by Justices Appel, Wiggins, and Hecht, the Chief Justice first determined that—under the various factors proposed by the U.S. Supreme Court in *Kennedy v. Mendoza-Martinez* (1963)—the registration scheme is sufficiently punitive in nature to bring Iowa's Cruel and Unusual Punishments Clause into play. Joined by Justices Mansfield, Waterman, and Zager, the Chief Justice further concluded that Iowa's registration scheme does not amount to cruel and unusual punishment. He reasoned that, by providing juvenile courts with a window of opportunity to remove juvenile offenders from the registry, the statutory scheme "strikes a reasonable balance between protecting society from the risk of aggravated offenders committing subsequent offenses and accounting for the youthful circumstances of juvenile offenders."

In *State v. Zarate* (2018), the 4-3 court rejected a facial attack on the juvenile-offender sentencing factors that the Iowa legislature promulgated in 2015 in Section 902.1(2)(*b*)(2) of the Iowa Code. By the same 4-3 margin, the *Zarate* court further held that Section 17 does not categorically bar courts from "mandatorily sentencing juvenile offenders convicted of first-degree murder to life imprisonment with the immediate possibility of parole or life imprisonment with the possibility of parole after a set number of years." Justices Appel, Hecht, and Wiggins declared in special concurrences that, in their view, Section 17 bars *all* mandatory minimum terms of incarceration for juvenile offenders, regardless of whether those minimums are fixed by the legislature or by the courts. The *Zarate* court nevertheless remanded for resentencing because—without regard to the juvenile offender's individualized circumstances in this first-degree murder case—the sentencing court had abused its discretion when it added ten years to the offender's mandatory minimum period of incarceration to bring the offender's sentence into line with what the judge "believe[d] should be the minimum period of time for somebody that takes the life of another individual, whether that person is a juvenile or an adult."

In *State v. Crooks* (2018), the court held that a juvenile court's waiver of jurisdiction over a child under Section 232.45(7) of the Iowa Code—allowing a child to be prosecuted in district court as a youthful offender—does not itself constitute "punishment" within the meaning of Section 17 and thus does not violate this constitutional provision. The *Crooks* court further held that Section 17 does not categorically bar a district court from sentencing as an adult, at age

eighteen, a "youthful offender" who committed his or her crime at the age of thirteen. (Sections 232.45 and 907.3A of the Iowa Code give district courts this authority.) Writing for the court, Justice Waterman emphasized that "policy-based arguments for juvenile sentencing reform should be directed to the legislature." In a separate opinion joined by Justices Hecht and Wiggins, Justice Appel expressed concern that, particularly for very young alleged offenders, juvenile courts might prove unable to reliably determine whether (in the language of Section 232.45(7)(a)(3)) there are "reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday." The legislature has instructed juvenile courts not to surrender jurisdiction over a child's prosecution unless the state establishes that there are no such reasonable rehabilitation prospects. If judges prove to struggle with making that determination in a reliable, non-arbitrary manner, Justice Appel wrote, then the court should revisit the possibility of imposing a categorical bar for adult punishment of those who commit their offenses below a certain age.

Section 18

On page 113, at the end of the paragraph that begins "As a general matter," insert:

> Moreover, a person loses his or her constitutionally protected property interest if he or she fails to meet reasonable, statutorily prescribed requirements for manifesting an intent to retain it (*City of Eagle Grove v. Cahalan Investments, LLC*, 2017). In *Cahalan Investments*, for example, the court held that individuals lost their property interest in two parcels because those parcels met Iowa Code Section 657A.10A's description of "abandoned property."

On page 114, after the paragraph that begins "Takings of the onerous-regulation variety," insert the following new paragraph:

> With respect to regulatory deprivations of "all economically beneficial or productive use" of property, the court has explained that no taking occurs when (1) the owner is using the property in a way that the challenged regulation does not allow and (2) the "owner's 'bundle of rights' never included the right to use" the property in that way (*City of Eagle Grove v. Cahalan Investments, LLC*, 2017). In *Cahalan Investments*, landowners objected when a city sought title to two of their parcels of land. The court ruled in favor of the city, finding that, when the landowners obtained the first parcel, existing law gave the government the right to take title to the property if it met Iowa Code Section 657A.10A's description of "abandoned property," and that, when the landowners obtained the second parcel, existing law made it clear that the owners could forfeit title if they allowed the property to become a public nuisance.

On page 115, replace the sentence that appears after footnote 117 with:

In January 2017, the court reiterated a regulatory-taking principle it had recognized in 1994: so long as there has been no permanent physical invasion and no deprivation of all economically beneficial or productive use of the property, a property-affecting regulation will not be deemed a taking requiring compensation if it "substantially advances a legitimate state interest" (*Board of Water Works Trustees v. Sac County Board of Supervisors*, 2017; *Hunziker v. State*, 1994). In December 2017, however, the court disavowed that principle, citing the U.S. Supreme Court's 2005 ruling in *Lingle v. Chevron U.S.A. Inc.* and declaring that the "substantially advances" analysis can no longer "be used as an independent basis to resist paying compensation" (*City of Eagle Grove v. Cahalan Investments, LLC*, 2017).

Section 21

On page 121, at the end of the page's final paragraph, insert:

In 2018's *State v. Lopez*, the court held that the state cannot impose a legislatively prescribed $100 surcharge as part of the criminal punishment for stalking that occurred prior to the date when the surcharge legislation went into effect.

On page 122, at the end of the carryover paragraph, insert:

In *In the Interest of T.H.* (2018), however—a case focused predominantly on Section 17's Cruel and Unusual Punishments Clause—the court concluded 4-3 that the application of Iowa's mandatory sex-offender registry scheme was punitive in nature when applied to *juvenile* sex offenders. Joined by Justices Waterman and Zager in a dissenting opinion on this point, Justice Mansfield warned that, by virtue of the majority's conclusion, "a juvenile can no longer be subjected to a new or different registration requirement enacted after his or her underlying conviction."

ARTICLE III

Section 38A

On page 185, after the first paragraph, insert the following new paragraph:

State agencies' administrative rules can displace municipal law, but—just as it does when assessing administrative rules in other contexts—the Iowa Supreme Court will deem such rules validly promulgated only when clearly authorized by state legislation (*City of Des Moines v. Iowa Department of Transportation*, 2018). In *City of Des Moines*, for example, the court concluded that the state's transportation department exceeded its statutory authority when it issued rules sharply restricting cities' ability to use automated cameras to detect speeding and other traffic violations.

ARTICLE V

Section 2

Regarding footnote 8 on page 217, the document titled "Chronological Chart and Tables of the Iowa Supreme Court: 1838 to Present" is now available at https://www.iowacourts.gov/for-the-public/iowa-courts-history/chronological-chart/. For comparable information, see https://www.iowacourts.gov/for-the-public/iowa-courts-history/ (providing a brief overview of the Iowa judiciary's evolution); https://www.iowacourts.gov/for-the-public/iowa-courts-history/past-justices/ (briefly introducing all of Iowa's past justices); and https://www.iowacourts.gov/iowa-courts/supreme-court/justices/ (briefly introducing Iowa's current justices).

Section 6

On page 226, after the sentence that spans pages 225-26, insert:

> For a discussion of things that a district court should consider when determining how to sequence its and the jury's handling of equitable and legal issues in a given lawsuit, see *Westco Agronomy Co. v. Wollesen* (2017).

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