THE IOWA STATE CONSTITUTION (Oxford University Press 2018)

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ARTICLE I

Section 1

On page 67, at the end of the sentence to which footnote 9 is appended, add the following clause:

> , though the second of the two (as I shall explain) no longer remains good law.

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

> In *Honomichl v. Valley View Swine, LLC* (2018), the court reaffirmed *Gacke*'s analytic framework and emphasized its fact-intensive nature. But in 2022's *Garrison v. New Fashion Pork LLP*, the court shifted course, overturning *Gacke*, observing that "[n]o other court in any jurisdiction has adopted or used the test" applied in *Gacke* and that the ruling in that 2004 case "engenders unnecessary litigation and is difficult to administer." The *Garrison* court determined that "challenges under the inalienable rights clause to regulatory statutes must be adjudicated under the highly deferential rational basis test."

On page 68, replace the first sentence of the first full paragraph with the following:

> It is indeed far easier to reconcile *Garrison* than *Gacke* with the lion's share of rulings in Section 1 cases.

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 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*, 2019).

At the end of that same footnote 35, insert:

As the court has recognized, however, determining whether the people whom legislation treats differently are indeed similarly situated is often bound up with determining whether the legislation survives the applicable standard of review (*AFSCME Iowa Council 61 v. State*, 2019). If the legislature has a rational basis for its decision to treat two groups of people differently in a given manner in a case governed by rational-basis review, for example, one could say that those people are not similarly situated for purposes of that legislation. The court has thus rightly questioned the logic of regarding the "similarly situated" inquiry as a threshold over which one must pass in a given case before conducting the Section 6 analysis under the applicable standard of review (*State v. Dudley*, 2009).

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

; 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); and differing treatment of payroll deductions for union dues and payroll deductions for other purposes (*Iowa State Education Association v. State*, 2019).

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. *Behm v. City of Cedar Rapids* (2019) (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." But in 2022's *Planned Parenthood of the Heartland v. Reynolds*, the Iowa Supreme Court reversed that ruling, finding that its 2018 equal-protection analysis was incorrect and mere dicta.

On pages 78-79, delete the short paragraph and replace it with the following::

In 2017's *Godfrey v. State*, the Iowa Supreme Court held that, when a government official violates a person's equal-protection rights and there is no adequate statutory remedy for the violation, the person may bring a constitutional cause of action for damages against the government official. But in 2023's *Burnett v. Smith*, the court reversed *Godfrey*, holding that "*Godfrey* is not supported by constitutional text or history" and that it is the job of the legislature, not the courts, to determine whether legal remedies ought to be available for such constitutional violations.

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:

The same 4-3 split recurred in 2018's *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."

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.

Of course, a 4-3 split among that particular group of justices in Section 8 cases was not inevitable. Justice Mansfield wrote for a 5-2 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. (For a subsequent, unanimous ruling concerning *Coffman* and the community-caretaking exception, see *State v. Smith* (2018).)

Justices Daryl Hecht and Bruce Zager left the court in 2018, and Governor Kim Reynolds selected Justices Susan Christensen and Christopher McDonald to replace them. With those changes—particularly with the addition of Justice McDonald—we saw signs that the trajectory of the court's Section 8 rulings might shift. Consider, for example, *State v. Brown* (2019). The issue in that case was whether Section 8 permits an officer to make a traffic stop when he or she has objectively reasonable cause to believe that the driver has committed a traffic violation, even if the officer's subjective reason for stopping the driver has nothing to do with that violation. (The officer in *Brown* had watched a driver run through a red light and operate a vehicle whose license-plate light was malfunctioning, but the officer decided to pull over the car only after learning that the car was registered to a person with suspected gang affiliations.) Following the U.S. Supreme Court's Fourth Amendment approach in *Whren v. United States* (1996), Justice Christensen led a 4-3 majority in ruling that "the subjective motivations of an individual officer for making a traffic stop are irrelevant so long as the officer has objectively reasonable cause to believe the motorist violated a traffic law." Attempting to take the officer's subjective state of mind into account, the court found, would be "unworkable." Justice McDonald joined the majority but filed a separate concurring opinion arguing more broadly that the court in prior cases had sometimes erred by assuming that the amount of protection afforded by any given provision of the Iowa Constitution is never less than the protection afforded by a comparable provision of the U.S. Constitution. Chief Justice Cady and Justices Appel and Wiggins dissented, arguing (among other things) that *Whren* was unwisely decided and that the majority's ruling here

left far too much room for racial profiling and implicit bias in officers' decisions about whom to pull over.

Chief Justice Mark Cady passed away in 2019 and Justice David Wiggins retired in 2020; their seats were filled by Justices Dana Oxley and Matthew McDermott. The implications of these and other recent changes in the court's makeup are not yet clear. The court has sometimes continued its move toward analytic independence. In an opinion for three justices in 2021's *State v. Wright*, for example, Justice McDonald—joined by Justices Oxley and McDermott—lamented ways in which the court has followed the federal Supreme Court on search-and-seizure matters rather than remain true to its own historical interpretive methods. Justice McDonald wrote:

> Given the uncertainty and lack of clarity in federal search and seizure jurisprudence, we conclude it is no longer tenable to follow federal precedents in lockstep. Article I, section 8, as originally understood, was meant to provide the same protections as the Fourth Amendment, as originally understood, but the Supreme Court's interpretation and construction of the Fourth Amendment has deviated from the text and original meaning. Respectful consideration of the Supreme Court's precedents does not require adherence to federal doctrine that members of that great Court, other jurists, and commentators all acknowledge departs from the text and original meaning of the constitutional prohibition against unreasonable seizures and searches.

These three justices concluded that "a peace officer engaged in general criminal investigation acts unreasonably under article I, section 8 when the peace officer commits a trespass against a citizen's house, papers, or effects 25 without first obtaining a warrant." Providing the critical fourth vote needed to form a majority, Justice Appel then joined them in holding that items placed outside one's house in garbage bags or garbage bins are "effects" within the meaning of Section 8; items placed in those bags or bins remain one's own property until picked up by a licensed trash collector; and—sharply repudiating the approach taken by the federal Supreme Court in its Fourth Amendment ruling in *California v. Greenwood* (1988)—"a warrantless search of a citizen's trash left out for collection is unlawful." Chief Justice Christensen and Justices Waterman and Mansfield would have held that police can indeed search one's trash without a warrant once one has placed the trash outside for pickup.

Needless to say, however, departures from federal jurisprudence are far from inevitable. In 2022's *State v. Hauge*, for example, the 6-1 court (with Justice Appel dissenting) followed the approach of the U.S. Supreme Court and most other state courts in holding that "there is no requirement . . . that subjects of a search must be informed of their right to decline the search in order for their consent to be voluntary."

As discussed in this book's commentary on Sections 6 and 9 of Article I and Section I of Article XII, the Iowa Supreme Court held in *Godfrey v. State* (2017) that, absent adequate statutory remedies, a person could bring a cause of action for damages against a government official who violates his or her constitutional rights. (Akin to the U.S. Supreme Court's landmark ruling in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* (1971), *Godfrey* thus recognized the possibility of what are commonly called "constitutional torts.") With respect to government officials' *Godfrey* liability for damages caused by their violations of Section 8, the justices in 2018's *Baldwin v. City of Estherville* 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 for constitutional torts 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.

In 2019, the *Baldwin v. City of Estherville* litigation came to the Iowa Supreme Court again, this time on a set of questions concerning *Godfrey* actions against constitutional tortfeasors' municipal employers. The court reached three broadly significant conclusions. First, under Iowa Code § 670.4(1)(c)—a provision of the Iowa Municipal Tort Claims Act—the municipal employer of a constitutional tortfeasor could assert immunity based on the tortfeasor's exercise of "due care." Second, under Iowa Code § 670.4(1)(e)—another provision of the Iowa Municipal Tort Claims Act—punitive damages could not be awarded against the constitutional tortfeasor's municipal employer. Third, pursuant to longstanding common law standards, a court could order the municipal employer of a constitutional tortfeasor to pay a prevailing plaintiffs' attorneys fees if the municipality "acted in bad faith, vexatiously, wantonly, or for oppressive reasons."

In *Venckus v. City of Iowa City* (2019), the court continued to build out its *Godfrey*-initiated constitutional torts jurisprudence (albeit dropping a footnote indicating cracks in the edifice[1]). Police and prosecutors in Johnson County had pursued rape charges against Joshua Venckus despite powerful evidence that Venckus was innocent and that another known man was the perpetrator. After a

[1] Writing for the six-member majority, Justice McDonald noted that "[t]he parties have not asked us to reconsider *Godfrey*, to consider whether a *Godfrey*-type claim can be asserted for alleged violations of the Iowa Constitution other than those recognized in *Godfrey*, or to determine whether *Godfrey*-type claims can be asserted against municipalities."

jury acquitted Venckus of the crime, he filed tort claims directly under Sections 1, 6, 8, and 9 of Article I against Iowa City police officers, the City of Iowa City itself, Johnson County prosecutors, and Johnson County itself. Led by Justice McDonald, the six-member majority reached four important conclusions. First, in constitutional tort actions, government prosecutors and their employers could assert judicial-process immunity, under which "government officials are absolutely immune from suit and damages for conduct 'intimately associated with the judicial phase of the criminal process'" (simultaneously quoting *Minor v. State*, 2012, and *Imbler v. Pachtman*, 1976). Second, police officers could claim the same judicial-process immunity when sued for constitutional torts, so long as their challenged actions fell within the scope of that immunity (such as when they testify as witnesses at trial). Third, whereas constitutional tort claims against the state and state employees are governed by the limitations period set forth in Iowa Code § 669.13 (a provision of the Iowa Tort Claims Act), claims against municipalities and their employees are governed by the limitations period set forth in Iowa Code § 670.5 (a provision of the Iowa Municipal Tort Claims Act), notwithstanding the fact that there are ways in which the latter is more disadvantageous to plaintiffs than the former. "The legislature has placed greater limitations on actions against municipalities compared to actions against the state," the court explained, "because municipalities 'operate under greater fiscal constraints than the state does' and municipalities have special problems with respect to formulating and implementing budgets" (quoting *Farnum v. G.D. Searle & Co.*, 1983). Fourth, because the Iowa Municipal Tort Claims Act does not itself create any new causes of action, but instead merely allows people to assert certain claims that otherwise would have been barred by sovereign immunity, it did not create the kinds of alternative remedies that are sufficient to supplant constitutional tort claims.

In 2020's *Wagner v. State*, the Iowa Supreme Court provided additional details concerning constitutional-tort claims brought pursuant to *Godfrey*. In response to certified questions sent to it by a federal district court, Iowa's high court found that the Iowa Tort Claims Act's procedural provisions (such as its statute of limitations, among others) applied to constitutional tort claims brought against state officials for acts performed within the scope of their employment. Under the ITCA, when plaintiffs sue state officials for acts performed within the scope of their duties, the state is substituted as a defendant and the action thus proceeds against the officials only in their official capacities.[2] The court noted that it had not yet decided whether constitutional tort claims could be brought against state officials in their *individual* capacities for acts performed *outside* the scope of their employment. The court also said that, as a general matter, when a plaintiff brought a constitutional tort action alleging that a state official used excessive force in the course of his or her duties, the ITCA's bar on punitive damages did

[2] *See* Iowa Code § 669.5(2) (2019).

not render the available remedies constitutionally inadequate. (The court acknowledged that punitive damages might be available for actions alleging other kinds of constitutional violations.) Finally, the *Wagner* court said that, absent a waiver of the sovereign immunity that it enjoys under the Federal Constitution's Eleventh Amendment, constitutional tort claims against state officials had to be brought in state court if the officials were acting within the scope of their employment when committing the acts giving rise to the lawsuit.

All of that *Godfrey*-initiated judicial work came crashing down in 2023's *Burnett v. Smith*. Unhappy with his arrest for interference with official acts, Cory Burnett had filed a *Godfrey* action against the arresting officer, alleging a violation of his state constitutional rights under Section 8. The Iowa Supreme Court rejected the claim, however, ruling that "*Godfrey* is not supported by constitutional text or history," the case "has been difficult to apply because our court has had to spin out new rules of law to accommodate these new types of claims," and *Godfrey* "has undermined the established allocation of responsibility between the legislative and the judicial branches of government." The *Burnett* court declared that "we no longer recognize a standalone cause of action for money damages under the Iowa Constitution unless authorized by the common law, an Iowa statute, or the express terms of a provision of the Iowa Constitution."

Section 9

On page 88, after the sentence noting cases "that are essentially equitable in nature," insert:

In *State* ex rel. *Attorney General of Iowa v. Autor* (2023), for example, the Iowa Supreme Court found that civil actions brought by the state's Attorney General under the Consumer Fraud Act are "essentially equitable" in nature because "[i]njunctive relief is at the center of CVA civil actions" and monetary remedies, although available, are not mandatory.

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, delete the last sentence of the carryover paragraph (the sentence concerning *Godfrey* actions).

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 citations:

> ; *In the Interest of M.D. v. K.A.*, 2018; *Bonilla v. Iowa Board of Parole,* 2019.

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, after the parenthetical citation to *King* and *Seering* in the ninth line, insert a footnote stating:

> As examples of governmental behavior that "shocks the conscience," the Iowa Supreme Court has pointed to "outrageous utilization of physical force; state-sponsored imposition of uncalled-for embarrassment or ridicule; or intolerable, disreputable, and underhanded tactics that may arise from government action deliberately designed to penetrate [the] attorney-client privilege." *Behm v. City of Cedar Rapids* (2019).

On page 90, at the end of the carryover paragraph, add the following additional sentence:

> In 2022's *In the Matter of the Guardianship of L.Y.*, the court similarly ruled that "[p]arents' fundamental right to the care, custody, and control of their children is seemingly meaningless without a preference for parents who have never been adjudicated unfit over all others in guardianship proceedings," and that those wishing to preserve a child's guardianship against such a parent's wishes thus must prove by clear and convincing evidence that preserving the guardianship is in the child's best interests.

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.[3] 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. The court subsequently explained that "a postconviction-relief applicant can establish a claim of actual innocence only upon clear and convincing evidence he or she was factually innocent of the offense of conviction, *including any lesser included offenses thereof*." *Dewberry v. State* (2019) (emphasis added).

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 2018 and 2022, abortion-seeking women experienced dramatic reversals of fortune at the Iowa Supreme Court. In *Planned Parenthood of the Heartland, Inc. v. Reynolds* (2018), the 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 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

[3] 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 claims.

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. (In *Planned Parenthood of the Heartland, Inc. v. Reynolds* (2021), however, the court upheld state legislation that barred abortion providers from participating in federally funded grant programs aimed at reducing teen pregnancy, reasoning that abortion providers do not themselves have a substantive due process right to *provide* abortions.)

By 2022—after there had been changes in its personnel—the Iowa Supreme Court reversed course. In *Planned Parenthood of the Heartland v. Reynolds* (2022)—a case concerning the Iowa legislature's imposition of a 24-hour waiting period for abortions—the court ruled 5-2 that its 2018 analysis was incorrect and should be abandoned. The court found no basis in Iowa's constitutional text or history for a strongly protected right to abortion, and the court said that it "should not be picking sides in divisive social and political debates unless some universal principle of justice stands on only one side of that debate." The court said that the undue-burden test would "remain the governing standard" for the time being, in part because the state hadn't yet asked the court to reject that test in favor of something even less protective. Rather than rule on the case's merits, the court remanded to the district court for further proceedings. Justices McDermott and McDonald (two of the court's most recent additions) objected to even leaving open the possibility of adopting the undue-burden analysis as a matter of state constitutional law; they argued that lawmakers should be able to restrict abortion for any plausible rational reason.

One week after that 2022 ruling, the United States Supreme Court handed down *Dobbs v. Jackson Women's Health Organization*, holding that its landmark abortion-protecting rulings in *Roe v. Wade* and *Planned Parenthood v. Casey* were wrongly decided. The *Dobbs* Court held that, under the Federal Constitution, legislative restrictions on abortion need merely be rationally related to a legitimate governmental objective.

In 2023, the Iowa Supreme Court split 3-3 (with Justice Oxley recused) on important questions about the status of abortion rights under the Iowa Constitution. Back in 2018, the Iowa legislature had enacted a fetal-heartbeat bill, banning most abortions after detection of a fetal heartbeat. (Heartbeats are usually detected around the sixth week of pregnancy.) A district court permanently enjoined enforcement of that law in 2019, finding it unconstitutional under the

strict-scrutiny standard that the Iowa Supreme Court, at that time, prescribed for reviewing abortion restrictions. The state did not appeal that ruling, though the enjoined fetal-heartbeat law remained in published editions of the Iowa Code. After the Iowa and federal rulings in 2022, the state asked Iowa's courts to rule that, like the Federal Constitution, the Iowa Constitution merely prescribes rational-basis review for abortion restrictions, that the 2018 fetal-heartbeat statute satisfies rational-basis review, and that the injunction on the fetal-heartbeat statute should therefore be lifted. Three justices (Waterman, Mansfield, and Christensen) voted to reject that request, finding that the case provided an inappropriate vehicle for declaring a shift away from the reigning undue-burden standard under the Iowa Constitution. These justices said that "it is legislating from the bench to take a statute that was moribund when it was enacted and has been enjoined for four years and then to put it into effect." Three other justices (McDonald, McDermott, and May) voted the other way, saying that the court should have done here what the state had asked it to do.

Shortly thereafter, Iowa's Governor Kim Reynolds called a special session of the legislature to consider new legislation on abortion.[4] During that session, the legislature once again voted in favor of the fetal-heartbeat restriction it had first enacted in 2018, and the governor quickly signed it into law.

Section 10

On page 93, recent decisions necessitate several changes to the last full paragraph (concerning the relationship between Section 10 and the U.S. Constitution's Sixth Amendment). For ease of reading, delete that paragraph and replace it with the following:

> The U.S. Supreme Court has held that, through the Fourteenth Amendment's Due Process Clause, the Sixth Amendment's guarantee of trial by an impartial jury applies in state criminal proceedings (*Duncan v. Louisiana*, 1968). The Iowa Supreme Court has not frequently drawn a sharp analytic distinction between Section 10's and the Sixth Amendment's parallel jury provisions. When faced with a claim that prosecutors violated both the Sixth Amendment and Section 10 by using their peremptory challenges to remove racial minorities from a jury, for example, the Iowa court applied the familiar analysis prescribed by the federal Supreme Court in *Batson v. Kentucky* (1986), making no distinction between the state and federal constitutions' demands (*State v. Veal*, 1997).[5] The court has also

[4] *See* Stephen Gruber-Miller, *What to Know about Gov. Kim Reynolds' Call for a Special Session to Pass New Abortion Laws*, DES MOINES REGISTER (July 5, 2023), https://www.desmoinesregister.com/story/news/politics/2023/07/05/kim-reynolds-calls-legislature-special-session-july-10-new-iowa-abortion-law-restrictions/70378574007/.

[5] In a second case called *State v. Veal*, however—this one decided in 2019, concerning a different Veal—Justice Wiggins endorsed eliminating the system of peremptory challenges altogether, arguing that they are not

applied the federal standards when deciding whether the likelihood of juror bias necessitated changing a criminal trial's venue (*State v. Veal*, 1997). The court has further said that both constitutional texts assure criminal defendants that their juries will be drawn from pools representing a "fair cross-section of the community" (*State v. Jones*, 1992).[6] On this "fair cross-section" issue, however, the Iowa Supreme Court has begun to impose Section 10 rules that go beyond what the United States Supreme Court has said the Sixth Amendment requires. In *State v. Lilly* (2019), the Iowa court held that, to prove a violation of the fair cross-section requirement, Section 10 requires a criminal defendant to show (among other things) that the minority group allegedly excluded was underrepresented in the jury pool to a statistically significant degree, and that the threshold is "one standard deviation—in other words, the percentage of the group in the jury pool must be one standard deviation or more below its percentage in the overall population of eligible jurors."[7] Moreover, when trying to make the necessary showing that the minority group's underrepresentation is the result of the state's "systematic exclusion" of that group's members in the jury-selection process, a criminal defendant may point to deficiencies resulting from "run-of-the-mill jury management practices such as the updating of address lists, the granting of excuses, and the enforcement of jury summonses." In another ruling handed down that same day—*State v. Veal* (2019)—the Iowa Supreme Court emphasized the ways in which its Section 10 analysis differs from the federal analysis under the Sixth Amendment: "a downward variance of two standard deviations must be shown under the Sixth Amendment" and "run-of-the-mill jury management practices" likely cannot "constitute systematic exclusion under the Sixth Amendment."

On pages 95-96, recent developments require deleting the sentence on the bottom of page 95 that begins "But some members of the Iowa Supreme Court," and continuing the deletion to the end of the paragraph on the top of page 96. In place of that passage, insert:

> The same holds true concerning when the right to counsel attaches. Under federal law, an individual's Sixth Amendment right to counsel does not attach until

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constitutionally required and that prosecutors' use of them is commonly what sits at the heart of the denial of defendants' Section 10 right to trial by an impartial jury. In that same case, Justice Appel argued that, when the last member of the defendant's racial minority group is removed from a jury as a result of the prosecutor's peremptory challenge, the court's scrutiny of that challenge should intensify in specified ways.

[6] Justice McDonald, however, has said that "[t]here is no textual or historical support for the proposition that the state constitutional right to an impartial jury includes the right to a jury pool drawn from a fair cross section of the community let alone the right to select a jury from a pool mathematically proportional to the jury-eligible population" *State v. Lilly* (2019).

[7] The *Lilly* court further said that, when determining the minority group's percentage in the overall population of eligible jurors, a trial court should rely upon the most current census data available and should focus specifically on individuals who are actually eligible for jury service (thereby excluding children and prisoners, for example).

judicial proceedings have been launched against him or her (*Rothgery v. Gillespie County*, 2008). In 2021's *State v. Sewell*, the Iowa Supreme Court similarly determined that "the article I, section 10 right to counsel does not attach prior to the initiation of a case or prosecution."[8]

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. With respect to the annual review proceedings conducted by the Iowa Board of Parole, the court has found that prisoners do not have a right to counsel under Section 10 because those proceedings do not amount to "cases" within the meaning of Section 10's use of that term (*Bonilla v. Iowa Board of Parole*, 2019).

On page 96, at the end of the first sentence of the first full paragraph, insert a footnote stating:

In 2019, the General Assembly adopted legislation requiring that claims of ineffective assistance of counsel be raised in post-conviction proceedings, rather than on direct appeal. *See* Iowa Code § 814.7. The Iowa Supreme Court has held that this legislation applies only to cases in which final judgment and sentence were entered prior to the statute's effective date of July 1, 2019 (*State v. Macke*, 2019).

On page 96, at the end of Section 10's final paragraph, insert the following sentence and ensuing 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 effective assistance of counsel, both the Sixth Amendment and Section 10 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

[8] The court thereby resolved an issue that had divided the Justices in 2016's *State v. Senn*.

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 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 105, at the beginning of the first paragraph under "Excessive Fines," strike the first two sentences and insert:

> In 2019's *Timbs v. Indiana*, the federal Supreme Court held that the Eighth Amendment's ban on excessive fines applies to the states. The ruling was not of great significance in Iowa, however, because the Iowa Supreme Court already routinely looked to federal precedent for guidance when interpreting 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 the carryover paragraph, insert:

(Having joined the court several years later, Justices McDonald and Christensen filed an opinion in late 2019, arguing that *stare decisis* does not insulate from reconsideration "demonstrably erroneous" rulings on constitutional matters. They contended that *Lyle* and *Roby* "are demonstrably erroneous interpretations of the Iowa Constitution" and should be abandoned (*Goodwin v. Iowa District Court* (2019).)

On page 110, at the end of the carryover paragraph, add the following sentence:

(In two decisions handed down the same day in 2022—*Dorsey v. State* and *Sandoval v. State*—the Iowa Supreme Court held that the defendant-benefiting restrictions imposed in *Lyle* and *Sweet* only apply to juvenile offenders and not to defendants who, as in *Dorsey*, were even just a few days beyond eighteen years of age when committing their crimes.)

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. In 2020's *State v. Majors*, however, a differently constituted court concluded 4-2 that the defense attorney in a juvenile-sentencing case had not provided ineffective assistance of counsel when—at the now-adult client's request—the attorney declined to call an expert witness to try to rebut the testimony of the state's expert witness regarding the appropriate application of the various sentencing factors.

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."
>
> Of course, constitutionally protected property interests are not limited to interests in land. In 2023's *Livingood v. City of Des Moines*, for example, the Iowa Supreme Court held that individuals had property interests in income-tax refunds that the state was statutorily obliged to pay them.

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).

On page 115, at the end of the page's final full paragraph (concerning Section 18's "public use" requirement), insert:

> Once given a clear opportunity to speak to the matter, however, Iowa's high court concluded in 2019 that the *Kelo* dissenters had the better view of how to understand the constitutional phrase "public use." The court declared in *Puntenney v. Iowa Utilities Board* (2019) that the "trickle-down benefits of economic development" are not sufficient to justify the exercise of eminent domain. What *is* a valid public use? As examples, the *Puntenney* court pointed to public utilities, railroads and other common carriers, and developments that will reduce the costs the public pays for such things as electricity. On the facts of the case before it, the *Puntenney* court held that property had been taken for a valid public use when the land was used for a pipeline carrying oil from North Dakota, across Iowa, to a hub in Illinois. The court found that the pipeline served constitutionally sufficient public uses for Iowans in the form of cheaper petroleum products and the safer transportation of oil. It did not matter that the oil was neither placed into nor drawn out of the pipeline within Iowa's borders. "The Iowa Constitution," the court wrote, "does not hang on the presence of spigots and on-ramps."

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, 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.[9] The court subsequently made clear—in a ruling upholding a statutory requirement that sex offenders disclose to law enforcement their "Internet identifiers," such as the name an offender uses when establishing a Facebook account—that the reasoning in *T.H.* does indeed apply only to juvenile offenders; it does not extend to *adult* offenders (*State v. Aschbrenner,* 2019).

[9] 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 II

Section 1

On page 132, at the end of the discussion of Section 1, insert the following new paragraph:

> In *League of United Latin American Citizens of Iowa v. Pate* (2020), the Iowa Supreme Court addressed a challenge to Iowa Code § 53.2, concerning the process by which voters are able to obtain and cast absentee ballots. The legislation declares that (1) voters must provide various pieces of information in order to obtain an absentee ballot and (2) if a voter provides incorrect information or omits necessary information when requesting an absentee ballot, the county auditor must contact the voter for the correct or missing information rather than obtain that information from the county's voter registration system or other sources. In the midst of the COVID epidemic and the 2020 general election—an election in which the number of requests for absentee ballots ran unusually high—a group of voters challenged that law. The plaintiffs argued that, by requiring county auditors to personally contact voters, many voters' requests for absentee ballots would not be timely filled, thereby depriving those voters of their ability to vote. The court rejected that argument.[10] Citing the U.S. Supreme Court's rulings in *Anderson v. Celebrezze* (1983) and *Burdick v. Takushi* (1992), the Iowa court first reasoned that the applicable standard of review depended on the severity of the burden placed on individuals' constitutional right to vote: a deferential standard applies if the burden is reasonable and nondiscriminatory, while strict scrutiny applies if the burden is severe. Here, the court found that the burden on individuals' right to vote was both unexceptional and easily justified: the requirement of personal contact by the county auditor helped to combat both the reality and the perception of voter fraud, the necessary information is clearly described on the absentee-ballot request form, voters are told on that form that the county auditor might need to contact them regarding their request for an absentee ballot, and voters who do not receive an absentee ballot can nevertheless vote in person either prior to or on Election Day.

ARTICLE III

Section 1

On page 142, at the end of the page's penultimate sentence, add a footnote stating:

[10] In *Democratic Senatorial Campaign Committee v. Pate* (2020), handed down the prior week, the Iowa Supreme Court found that three county auditors had violated Iowa Code § 53.2 when they sent absentee-ballot applications to voters with the necessary information already filled in.

The legislature, however, can prescribe such rules too. In both *State v. Thompson* (2021) and *Hrbeck v. State* (2021), for example, the Iowa Supreme Court rejected separation-of-powers challenges to statutes barring represented criminal defendants and represented postconviction-relief applicants, respectively, from filing pro se supplemental briefs. In *State v. Tucker* (2021), the court rejected a similar challenge to statutes (1) denying appeals (absent good cause) to those who are convicted of crimes based upon guilty pleas and (2) declaring that ineffective-assistance-of-counsel claims cannot be raised on direct appeal and can only be raised in petitions for postconviction relief.

Legislative Department: Section 1

On page 145, at the end of the carryover paragraph, insert:

In *Behm v. City of Cedar Rapids* (2019)—a delegation case arguably involving a mix of quasi-legislative and quasi-executive functions—the court held that no unlawful delegation of governmental powers had occurred when the City of Cedar Rapids used Gatso USA, Inc. (a private company) to help implement the city's automated traffic enforcement system. Gatso obtained and screened images of passing cars' license plates before passing them along to Cedar Rapids law-enforcement officers for a decision about whether to issue speeding citations. The court found that Gatso's activities were merely "ministerial" in nature and thus did not create delegation difficulties.

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.

On page 185, after the parenthetical reference to "implied conflict preemption" in the middle paragraph, insert a footnote stating:

The court has explained that an irreconcilable conflict does not exist "unless the conflict is obvious, unavoidable, and not a matter of reasonable debate." *Behm v. City of Cedar Rapids* (2019).

ARTICLE V

Section 1

On page 216, at the end of the last full paragraph, insert:

> In 2022's *State v. Basquin*, the court held that Section 4 was among the sources of authority for the court's order permitting written (rather than in-person) guilty pleas during the COVID-19 pandemic.

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 4

On page 221, after the first full paragraph's sentence stating that, "[a]s a general matter, the supreme court's practice is to follow the trial court's lead when deciding whether to treat a case as legal or equitable in nature," insert the following citation at the beginning of the parenthetical that references *Citizens Savings Bank*:

> *Carroll Airport Commission v. Danner* (2019);

On that same page and in the same paragraph, in the parenthetical that cites *Nelson v. Agro Globe Engineering*, insert the following citation after *Nelson*:

> ; *see also In the Matter of the Application of Coe College for Interpretation of Purported Gift Restriction*, 2019)

On page 222, under the *Supervisory and administrative control over inferior judicial tribunals*, immediately after the sentence to which footnote 17 is appended, insert:

> In 2022's *State v. Basquin*, the court held that Section 4 was among the sources of authority for the court's order permitting written (rather than in-person) guilty pleas during the COVID-19 pandemic.

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).

Section 14

On page 232, at the end of the carryover paragraph, insert:

> In 2021, the court ruled in *Hrbek v. State* that the legislature acted within its Section 14 power when it barred postconviction-relief applicants who are represented by counsel from filing their own *pro se* documents. That same year, the court held in *State v. Tucker* that the legislature had acted within its powers when it enacted legislation providing that ineffective-assistance-of-counsel claims cannot be raised on direct appeal and can only be raised in petitions for postconviction relief.

Section 15

On page 233, at the end of the carryover paragraph, insert:

> The Iowa Supreme Court has determined that, when the governor says he or she has made an appointment within the thirty-day deadline and the chief justice says that he or she defers to and accepts the governor's representation that an appointment was made prior to the deadline, any subsequent challenge to the timeliness of the appointment presents a nonjusticiable political question (*State ex rel. Dickey v. Besler*, 2021).

Section 16

On page 234, replace the first full paragraph's opening two sentences with:

> Note that, under the commission-composition system established by Section 16, precisely half of the seats on the nominating commissions were to be held by individuals elected by members of the Iowa Bar. Three points about that arrangement deserve special mention.

Then, at the end of that same paragraph, insert:

> Third, Section 16's second sentence indicates that the commission-composition system established in this section had to remain in place until July 4, 1973, but that changes to the system could thereafter be made "by law." In 2019, the legislature exercised that power by altering the composition of the state judicial nominating commission. Members of the Iowa Bar continue to elect some of that commission's members, but a majority—a total of nine—are now appointed by the Governor, thereby giving him or her greater control over the group that assembles slates of nominees for open seats on both the Iowa Supreme Court and the Iowa Court of Appeals. Moreover, rather than have a senior justice from the

Iowa Supreme Court chair the state judicial nominating commission, the commission's members now choose the chair for themselves.[11]

ARTICLE VII

Section 1

On page 245, after the carryover paragraph, insert the following new paragraph:

In 2013's *Iowa Individual Health Benefit Reinsurance Corporation v. State University of Iowa*, the Iowa Supreme Court considered an arrangement under which public universities that provided self-funded health insurance plans to their employees were statutorily obliged to make annual payments to a legislatively created nonprofit corporation called the Iowa Individual Health Benefit Reinsurance Corporation. The universities claimed that the annual payments violated Article VII, but the court rejected that claim, finding that the universities were not acting as sureties responsible for others' debts. Rather, the mandated payments were required "in exchange for the benefit of allowing employers, including the state, to provide self-funded health benefit plans to their employees."

ARTICLE X

Section 1

On page 285, after the first full paragraph, insert the following new paragraph:

Note that, after the General Assembly first approves a proposed constitutional amendment, the proposed amendment must be published, "as provided by law, for three months" prior to the ensuing general election. By requiring publication, the constitution helps to ensure that voters understand what is at stake when selecting the next group of lawmakers. The General Assembly has declared that, to fulfill this publication requirement, "the state commissioner of elections shall cause [the proposed amendment] to be published, once each month, in two newspapers of general circulation in each congressional district in the state, for the time required by the Constitution." Iowa Code § 49A.1. In 2018, the Office of the Secretary of State neglected to satisfy that requirement, thereby foiling (at least for the time being) a Republican-led effort to add a gun-rights amendment to the constitution.[12]

ARTICLE XII

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[11] *See* Senate File 638, div. XIII, 88th Gen. Assemb., Reg. Sess. (Iowa 2019) (amending numerous subsections of Iowa Code ch. 46), *available at* https://www.legis.iowa.gov/docs/publications/LGE/88/SF638.pdf.

[12] *See* Stephen Gruber-Miller & Barbara Rodriguez, *Miscue Sets Back Pro-Gun Change to State Constitution*, DES MOINES REGISTER, Jan. 15, 2019, at 1A.

Section 1

The full paragraph on that page discusses the Iowa Supreme Court's 2017 ruling in *Godfrey v. State*. That case, however, has since been overruled. The descriptions of the law in that paragraph should thus be places in the past tense. And at the end of that paragraph, insert the following:

> In *Burnett v. Smith* (2023), however, the court rejected the *Godfrey* court's analysis. After quoting from the *Godfrey* dissent at length, the *Burnett* court embraced that dissent's reasoning in full.

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